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ABSTRACT

This report addresses how, and to what extent, institutional accreditation might be utilized in lieu of part or all of the State licensing review. During 1989, the State enacted legislation that considerably raised the licensing standards for private postsecondary institutions. These new State standards were used as a basis for examining the practices of 14 regional and national accrediting associations that accredit institutions in California and found that, as a whole, the State's new statutory standards relating to institutional stability, institutional integrity, and consumer protection were more stringent than those required by the accrediting agencies. It was recommended that California not rely directly on regional and national accrediting agencies for maintaining the State's statutory standards. It was recommended instead that the new Council for Private Postsecondary and Vocational Education seek to collaborate only with those accrediting agencies whose policies and resources enable them to cooperate with it in collecting and sharing information and whose record of accrediting California institutions has been found to be satisfactory. The appendix contains Assembly Bill 1993 (1989) and an explanation of the study's methodology. Contains 12 references. (GLR)

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Summary

The Commission has prepared this report in response to Assembly Bill 1993 (Farr, 1989), which charged it to answer the question, "how, and to what extent, institutional accreditation might be utilized in lieu of part or all of the State licensing review." This report continues the Commission's review of State policy with respect to nongovernmental accreditation that resulted in Commission publication of a 1989 document by the same title, and thus this report stands as the second half of a two-part series.

In its 1989 report, the Commission advised the Legislature that accrediting standards, procedures, and the rigor of their application were not consistent among institutional accrediting agencies and thus a blanket State policy exempting all accredited institutions from State review under its licensing law was inadvisable. The Commission further advised that reliance on accreditation "in lieu of State licensure" should be considered only when an accrediting agency's standards substantially covered the standards and consumer protection requirements of the State's licensing laws and these standards were rigorously enforced. In response to this advice, the Legislature asked the Commission to indicate which agencies met these criteria.

During 1989, the State enacted legislation that raised considerably the licensing standards for private postsecondary institutions. The Commission used these new State standards as a basis for examining the practices of 14 regional and national accrediting associations that accredit institutions in California and found that, as a whole, the State's new statutory standards relating to institutional stability, institutional integrity, and consumer protection are more stringent than those required by the accrediting agencies.

As a consequence, in this report the Commission advises against the State's relying directly on regional and national accrediting agencies for maintaining the State's statutory standards. It recommends instead that the new Council for Private Postsecondary and Vocational Education seek to collaborate only with those accrediting agencies whose policies and resources enable them to cooperate with it in collecting and sharing information and whose record of accrediting California institutions has been found to be satisfactory by the Commission.

The Commission adopted this report at its meeting on April 28, 1991, on recommendation of its Policy Evaluation Committee. Additional copies of the report may be obtained from the Publications Office of the Commission at (916) 324-4991. Questions about the substance of the Commission's report may be directed to William K. Haldeman of the Commission staff at (916) 322-7991.

THE STATE'S RELIANCE ON NON-GOVERNMENTAL ACCREDITATION

• PART TWO

A Report to the Legislature
in Response to Assembly Bill 1993
(Chapter 1324, Statutes of 1989)

CALIFORNIA POSTSECONDARY EDUCATION COMMISSION
Third Floor • 1020 Twelfth Street • Sacramento, California 95814-3985

COMMISSION REPORT 91-6
PUBLISHED APRIL 1991

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Executive Summary

Source of study

This report responds to the legislative mandate in Assembly Bill 1993 (Farr, 1989) which directs the Commission to consider four issues relating to the relationship between nongovernmental accreditation and state licensure in California:

1. Do the standards and procedures of accrediting agencies encompass the standards and consumer protection requirements of California law?
2. Are those standards rigorously enforced?
3. What deficiencies in standards, procedures, or enforcement exist?
4. How effectively does the accrediting agency respond to consumer complaints forwarded by State agencies?

These questions arise because, as Part One of the report shows, the State has for several decades relied on the standards and procedures of both regional and national accrediting agencies by accepting the accredited status of institutions as a sufficient indicator of the quality and probity of their operations and products. This State policy resulted in exempting accredited degree-granting and vocational institutions from any responsibility to the State's licensing standards or consumer protection laws in the Education Code. Under this practice, accrediting agencies acted "in lieu of a state licensing agency" to monitor the activities of their accredited institutions.

On several occasions during the 1980s, the Postsecondary Education Commission examined this use of accrediting agencies as well as the closely related matter of the effectiveness of the State's licensing agency and found much evidence to support the growing consensus at the State level and among educators at-large that (1) the State's reliance upon accreditation had gone too far, and (2) the State's licensing laws and the agency assigned to enforce these laws were woefully inadequate for assuming the responsibility of oversight of the exempted accredited institutions.

Reform legislation in 1989 dealt with both of these problems. California's licensing laws were strengthened, a new Council for Private Postsecondary and Vocational Education was established with greater authority to address regulatory matters, and the oversight of all accredited institutions except those accredited by the Western Association of Schools and Colleges (WASC) was assigned to the new Council.

The creation of the Council has raised hopes that it will provide closer monitoring than most accrediting agencies have been able to accomplish. Still, the immensity of the task of overseeing more than 2,000 licensed postsecondary institutions in the State and the State's recent lack of success in carrying out this task has encouraged some decision makers to search for ways to utilize the resources of accrediting agencies without delegating the Council's authority for oversight of these institutions.

Fundamental differences between accreditation and state licensure

Part Two sets the stage for discussing how accrediting agencies and the State's Council might work together by defining terms; i.e., by drawing a distinction between accreditation and licensure and by showing how the variety of terms used in denoting licensure have come into our regulatory lexicon. The discussion of terminology also shows how the State's original provision for chartering higher education institutions gradually gave way to licensing all postsecondary institutions and why this change brought with it increased regulations.

The State's legitimate interests: how do licensing and accrediting standards compare?

Part Three highlights the specific concerns the Legislature addresses through current licensure legislation. In general, this study has found that these concerns are generated by problems which occur most often in for-profit (proprietary) institutions and often are also associated with institutional abuses of federal programs of financial aid for students.

Part Four examines the ability of 16 regional and national accrediting agencies to monitor the quality and probity of their member institutions. A list of seven criteria is used to determine the differences among accrediting agencies and the adequacy of their oversight of institutions. New licensing standards dealing with institutional stability, institutional integrity, and consumer protection are discussed in some detail and compared with similar accreditation standards.

The Commission's findings from this comparison are that the new licensing standards in statute are more specific and more rigorous than those published by the accrediting agencies. A comparison of the actual enforcement of the various standards by the Council and the enforcement of the accrediting standards by the various agencies must be done in order to compare their actual relative effectiveness. This comparison, obviously, could not be done because the Council has only recently taken up its new responsibilities (January 1, 1991).

Can the Council and accrediting agencies work together?

Part Five discusses the potential for collaboration between the Council and the individual accrediting agencies. The Commission points to the limitations and risks inherent in formal agreements to share responsibilities and information. Despite a number of difficulties the agencies and Council would face, the Commission concludes that there are many activities that can be undertaken to reduce redundant reporting and evaluation tasks for the institutions and, at the same time, increase the effectiveness of both licensure and accreditation. While some agencies expressed more interest than others in this goal, the institutions were nearly unanimous about the importance of cooperation for the sake of efficiency. This section of the report concludes with the presentation of two models of how the Council might work with accrediting agencies. The selection of one or the other model would depend, in part, upon the strength of the accrediting process determined by the Commission's continuing review of these accrediting agencies.

Conclusions

In Part Six, the Commission presents its responses to the four questions raised in AB 1993, and its conclusions and recommendations regarding the State's reliance on accreditation agencies "in lieu of part or all of the State's licensure or licensure process." The Commission's conclusions can be paraphrased as follows:

1. Do the standards and procedures of accrediting agencies encompass the standards and consumer protection requirements of California law?

   No. The Commission finds that the present licensing standards in statute covering institutional stability, institutional integrity, and consumer protection are not only more explicit and objective in their language than accreditation standards, they are, in most instances, also more rigorous in their requirements.

2. Are those standards rigorously enforced?

   The Commission was unable to compare the relative strength of enforcement of licensing and accrediting standards because the new Council has only begun to operate. The Commission was able to observe the differences in outcomes of the various accrediting agencies it evaluated and found that, on the basis of various criteria listed in its report, some agencies appear to be maintaining a satisfactory record while others are deficient in some important respect(s).

Satisfactory

Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges

American Association of Bible Colleges

American Osteopathic Association

Association of Theological Schools in the United States and Canada

Council on Chiropractic Education

Foundation for Interior Design Education Research

North Central Association of Colleges and Colleges

Southern Association of Colleges and Schools

Deficient

Accrediting Bureau of Health Education Schools

Accrediting Council for Continuing Education and Training

Association of Independent Colleges and Schools

National Accrediting Commission of Cosmetology Arts and Sciences

National Association of Trade and Technical Schools

National Home Study Council

Special consideration

Accrediting Commission for Community and Junior Colleges, Western Association for Schools and Colleges

The ACCJC was selected for special comment because its only deficiency as far as the present review was concerned was the high collective default rates found in the State's public community colleges. The collective default rate of the private colleges accredited by ACCJC was much lower.

3. What deficiencies in standards, procedures, or enforcement exist?

In addition to the less rigorous standards reported above, the Commission found that some of the accrediting agencies' procedures were also less stringent than those required by the State. These include a longer time between accreditation site visits than the State's period between licensing reviews; lack of annual review of advertising materials; lack of review of any new owner's background; and lack of a firm requirement that all new branches be visited before being approved by some accrediting agencies.

4. How effectively do the accrediting agencies respond to consumer complaints, including complaints forwarded by State agencies?

The Commission examined the written procedures followed by each accrediting agency but was unable to determine to any degree of satisfaction the effectiveness of the procedures employed. None of the accrediting agencies requires their institutions to inform students of the opportunity to forward complaints to the their agency or to the State licensing agency as is required by the State. Neither do accrediting agencies deal with complaints that may be due to an institution's noncompliance with State law. The Commission believes that students need to be informed not only of their access to both the Council and the accrediting agency for resolution of their complaints, they also need to have assistance in determining which types of complaints should be sent to which agency.

Recommendations

On pages 39-40, the Commission offers the following recommendations:

The Commission recommends that the Legislature retain the following policy that it adopted in Senate Bill 190 (Morgan, 1989):

The State through the Council for Private Postsecondary and Vocational Education shall maintain full responsibility for licensing and monitoring the compliance with state standards for all private postsecondary educational institutions covered under the Private Postsecondary and Vocational Education Act of 1989. The Council shall not utilize an institution's national or re-

gional accreditation or accreditation process in lieu of part or all of the State's licensure or licensure process.

In urging the fullest cooperation in sharing substantial useful information between the Council and selected accrediting agencies, the Commission recommends that the Council establish a formal protocol for sharing information with those accrediting agencies that have been identified as maintaining a satisfactory record with respect to performance criteria developed and applied by the Commission.

Introduction

THIS REPORT is the third that the California Postsecondary Education Commission has issued in the past six years on the relationship between State licensure and voluntary accreditation of academic institutions, and by and large it constitutes a follow-up to the second of them.

In 1984, the Commission issued *Public Policy, Accreditation, and State Approval in California: State Reliance on Non-Governmental Accrediting Agencies and on State Recognition of Postsecondary Institutions to Serve the Public Interest*, in which it reviewed California's use of accreditation and concluded that, in general, "the State's reliance on accreditation deserves endorsement and continuation," but in certain areas, "the reliance has gone too far, resulting in potential threats to the independence of accrediting associations and to the public interest in general, and leading to unnecessary problems in the heretofore cooperative and constructive relationships between these associations and State agencies" (p. 11).

In 1989, the Commission issued *The State's Reliance on Non-Governmental Accreditation: A Report to the Legislature in Response to Assembly Concurrent Resolution 78 (Resolution Chapter 22, 1988)*, in which it reviewed this policy area in order to determine whether any or all of the responsibilities then delegated to accrediting agencies should be assumed by the State. After evaluating the standards, procedures, and resources of nine private associations that accredit most of the accredited private postsecondary institutions operating in California, the Commission concluded that (1) accrediting agencies are not uniform in the rigor and comprehensiveness of their standards and procedures, and (2) their policy of confidentiality prohibits them from relaying information to State or federal officials about institutional violations of State or federal standards when, in the course of an accreditation assessment, such violations are discovered (p. 32).

These findings led the Commission to recommend that State policy be directed by the following two guidelines:

> In the oversight of private postsecondary institutions in California, the State should retain and exercise its responsibility for ensuring compliance with its minimum quality standards and consumer protection laws; and
>
> The State should rely upon individual accrediting agencies for purposes of protecting the consumer and maintaining the integrity of degrees and other awards on an agency-by-agency basis as determined by the appropriate State agency. Such reliance should be found appropriate only when an accrediting agency can demonstrate that its standards and procedures substantially cover the standards and consumer protection requirements in the State's licensing laws and that these are rigorously enforced. This decision to rely on an accrediting agency for this purpose should be subject to periodic evaluation by a responsible agency of the State (p. 4).

As a result of these recommendations, in Senate Bill 190 -- the Private Postsecondary and Vocational Education Reform Act of 1989 (Morgan) -- the Legislature established the State's full authority over accredited private institutions by giving the State's licensing agency -- the newly created Council for Private Postsecondary and Vocational Education -- the responsibility for assessing, licensing, and monitoring all of these institutions except those accredited by the Western Association of Schools and Colleges (WASC). It thus discontinued the statutory exemption from State review of all non-WASC accredited private institutions. In other words, as a result of SB 190, all accredited private postsecondary institutions in California, except those accredited by WASC, must undergo a qualitative assessment, be approved to operate and be monitored annually by the new Council.

SB 190 allows the Council to work cooperatively with accrediting agencies so that its workload and the institution's expenses for parallel reviews can be held to a minimum. It provides the new Council the authority to "utilize the resources of accrediting

agencies in gathering information about accredited postsecondary and vocational institutions, including participating as an observer on accrediting site visits," but it adds: "However, this does not preclude or relieve the council of its responsibilities under the provisions of this chapter and the council shall retain full authority for approving all private postsecondary and vocational institutions operating in California" (Section 94311.4).

The Commission's 1989 study of accrediting agencies was too general for it to make an agency-by-agency determination about those agencies that have the resources, policies, and practices on which the State can rely and that would allow them to cooperate with the new Council. In AB 1993 (1989, Farr), which is reproduced as Appendix A, the Legislature directed the Commission to make that determination. It called on the Commission to recommend how, and to what extent, institutional accreditation might be utilized in lieu of part or all of the State licensing review, and it directed the Commission to follow up this initial review with subsequent review at five-year intervals.

In AB 1993, the Legislature directed the Commission to consider these issues:

1. Do the standards and procedures of accrediting agencies encompass the standards and consumer protection requirements of California law?
2. Are those standards rigorously enforced?
3. What deficiencies in standards, procedures, or enforcement exist?
4. How effectively does the accrediting agency respond to consumer complaints, including complaints forwarded by State agencies?

This document constitutes the Commission's report on its initial review and its response to those four questions.

1 *The Problem*

FROM 1958 TO 1989, the State of California permitted most accredited private postsecondary institutions to operate without monitoring by its licensing agencies in the State Department of Education and the Department of Consumer Affairs -- and without being required to meet the State's standards for institutional licensure -- generally known as "authorization" or "approval." New private institutions were required to be authorized by the State in order to begin operating in California, but if they eventually became accredited, they could continue to operate with their accrediting agency serving "in lieu of a state licensing agency."

The premise of this policy was that the standards institutions had to meet in order to become accredited were higher than the standards required by the State, and the periodic monitoring and evaluation undertaken by accrediting agencies was more thorough. At the time, this premise was generally correct. During this period, the State's authorization and approval standards and its review procedures were notoriously ineffective, and its policy of accepting accreditation "in lieu of State licensure" seemed to make good sense. Besides filling the gap created by California's weak licensing law, this reliance on accreditation appeared to be efficient in that it relieved accredited institutions of the cost of duplicative evaluations by two external agencies, while it also saved the State from having to expand its licensing agencies in order to license and monitor these institutions.

In a sense, the State was relying on private accrediting agencies to do its work: to maintain minimum educational standards and provide an acceptable level of consumer protection among accredited institutions instead of holding the Private Postsecondary Education Division in the Department of Education or the licensing boards in the Department of Consumer Affairs responsible for the overall quality and stability of these institutions. To the extent that they filled this role, accrediting agencies were acting as quasi-governmental bodies serving in lieu of the State in matters affecting the quality and probity of institutions.

For most of this period, between 1958 to 1989, consensus existed that the State's licensing agencies should have no authority over an accredited institution unless and until it lost its accreditation, at which time the institution returned to the oversight of the State Department of Education or Department of Consumer Affairs and was once again subject to the licensing standards current at that time.

By the early 1980s, this consensus was breaking down. Evidence was accumulating that the branch operations in California of some institutions accredited by their home regional accrediting association elsewhere in the country were not receiving the attention necessary to maintain quality. As a result, the Legislature first required these out-of-state institutions to be accredited by the Western Association of Schools and Colleges (WASC) as well as by their own accrediting agency. This requirement lasted for only two years (1983-1985) because of the resistance from other regional and programmatic accrediting associations and the national Council on Postsecondary Accreditation (CPEC Report 85-35). In 1985, the Legislature removed the out-of-state institution's exemption from State oversight and assigned their review to the State Department of Education -- a step that affected 14 out-of-state institutions.

In 1989, the consensus collapsed. Senate Bill 190 (Morgan) -- known as the Private Postsecondary and Vocational Education Reform Act of 1989 -- created a new Council for Private Postsecondary and Vocational Education, a potentially stronger licensing agency than that in the State Department of Education, to review, evaluate, and license private institutions. Moreover, Assembly Bill 1402 -- the School Reform and Student Protection Act of 1989 -- imposed rigorous consumer protection standards on accredited vocational schools. Both pieces of legislation removed the statutory exemption from State licensure that more than 350 nationally accredited

private institutions enjoyed. Only the 133 private/independent institutions accredited by the Western Association of Schools and Colleges (WASC) remain exempt from State oversight, and under Senate Bill 190, even this exemption is scheduled for review by the Commission in 1995.

This change in State policy regarding the exemption of accredited institutions from licensure occurred for many reasons:

- A number of egregious failures by some national accrediting agencies (particularly those that accredit proprietary or "for-profit" schools) to monitor or act effectively against serious institutional abuses received broad exposure in the national press, casting doubt on the ability of these accrediting agencies to manage their far-flung empires;
- Increasing dissatisfaction with the high rate of student loan defaults put accrediting associations' credibility at risk;
- The national dialogue on the assessment of institutional effectiveness seemed to suggest ways in which the State, as well as individual institutions, could improve its evaluation processes; and
- In California, the Attorney General filed cases against institutions and accrediting agencies for "Acts of Unfair Competition in Violation of Business and Professions Code Section 17200" in connection with some of the same types of illegal activity reported in other parts of the nation.

The creation of the new Council for Private Postsecondary and Vocational Education has raised hopes that closer monitoring can be achieved by the State than most accrediting agencies other than WASC have been able to accomplish. Under SB 190, the Council has the authority to "utilize the resources of accrediting agencies in gathering information about accredited postsecondary and vocational institutions, including participating as an observer on accrediting site visits," but the Legislature stipulated that "this does not preclude or relieve the council of its responsibilities under the provisions of this chapter and the council shall retain full authority for approving all private postsecondary and vocational institutions operating in California" (Education Code Section 94311.4). WASC-accredited institutions retain their exemption from the Council's authority in large part because virtually no information has appeared indicating that they need closer monitoring by the State and perhaps also because the location of WASC's administrative offices within California itself ensures quick access should a problem arise.

Assembly Bill 1993: An effort to fine-tune public policy

While SB 190 and AB 1402 clearly placed the responsibility for the oversight of private institutions accredited by national accrediting associations with the new Council and prohibited it from delegating its responsibility to nongovernmental accrediting agencies, Assembly Bill 1993 (Farr, 1989; reproduced in Appendix A) -- the source of the Commission's mandate for this study -- presents a more measured approach. It reflects a search for a closer working relationship between the State's licensing agency and selected accrediting agencies, recognizing that there was a wide range of organizational effectiveness among the 16 regional and national accrediting agencies that accredit institutions or their branches in California. The search for a working relationship between the State and accrediting agencies was motivated, first, by the desire to avoid unnecessary duplication and expense of two separate external evaluations and, second, by the belief that there are complementary aspects to the two processes that taken together provide a more effective review of private institutions than either can provide alone.

The Commission's guidelines in its 1989 report on accreditation were the basis for the language in AB 1993 which directs this further review of accrediting associations. These guidelines supported the Legislature's proscription against the delegation of the Council's responsibilities to a nongovernmental accrediting agency, but, without defining fully what was meant, it suggested that the Council might rely on some accrediting agencies for some services. The guidelines state, in brief:

1. The State should retain its licensing and monitoring authority over all private institutions in the State; and
2. The State should rely on individual accrediting agencies only when it can be demonstrated that the agency's standards and pro-

cedures substantially meet the State's standards and procedures.

The Commission's recommendations left an unfinished agenda that, as AB 1993 directs, should now be completed. Essentially, this agenda requires answers to two overarching questions:

1. What are the implications for the State's new Council of relying on an accrediting agency while the Council retains the ultimate authority for licensing and monitoring all private institutions?
2. Which accrediting agencies can demonstrate that their standards and procedures substantially meet the State's minimum standards and procedures?

The first of these two questions appeared to cause little concern on the part of State policy makers as AB 1993 made its way through the Legislature, perhaps because the State had for more than 30 years relied on accrediting agencies. A proposal to continue relying on them in some other, perhaps more limited capacity, did not seem to raise a new issue. However, in the course of discussing this question with members of the Commission's advisory committee for this project, accrediting commissions, and the Commission on Postsecondary Accreditation (COPA) -- the higher education community's accrediting agency of accrediting agencies -- a number of these advisors raised vigorous objections to a continuation of this policy in any form. Several representatives of accrediting commissions even raised an objection to a Commission request for them to participate in an information gathering process that might ultimately lead to one or more accrediting associations being designated by a California State agency to serve "in lieu of State licensure" in any capacity. Dr. Thurston E. Manning, Executive Director of COPA, held that the potential results of such cooperation:

> could result in imposing on the accrediting body the legal obligations imposed on a state agency, such as open meetings, due process procedures as specified in state statutes, shielding of a bankrupt institution from removal of a license provided by a state agency, etc. At the same time, the accrediting body would receive none of the advantages of a state agency, such as legal advice and defense provided by the State, State assumption of agency liability for actions, and State police powers in investigation. In short, if a private accrediting body were found to be engaging in state action its activities would be deeply and adversely affected without commensurate reward. (Letter to COPA accrediting bodies, February 8, 1990.)

The potency of the issue was reduced when the Commission pointed out that SB 190 prohibited the Council from delegating its responsibility to the accrediting associations. Every association with institutions in the State ultimately participated in the Commission's review, but they remain wary of any relationship with the State that might compromise their autonomy.

In AB 1993, the Legislature directed the Commission to consider the following issues in its review of the accrediting associations.

1. Do the standards and procedures of accrediting agencies encompass the standards and consumer protection requirements of California law?
2. Are those standards rigorously enforced?
3. What deficiencies in standards, procedures, or enforcement exist?
4. How effectively does the accrediting agency respond to consumer complaints forwarded by State agencies?

These questions were developed in the expectation that their answers would indicate which accrediting associations the State could substantially rely on "in lieu of licensure." As the conclusions to this report indicate, the questions were unimportant, but for a slightly different purpose than originally intended.

In addition to the foregoing questions, the Commission also inquired about the accrediting associations' policies regarding the sharing of information with a State agency. The Commission's methodology, the scope of its analysis, and the names of members of its advisory committee for this project are listed in Appendix B.

Limitations of the review

The information utilized in this study was almost entirely that which could be obtained through the

mail or at advisory committee meetings. The small number of Commission staff and the limits on other resources meant that most of the processes of the 16 accrediting associations such as the site visits and association meetings could not be reviewed first-hand. Although much information was collected on the policies and procedures of handling student complaints, the Commission was unable to determine in any systematic way how effective the accrediting agencies' complaint procedures are.

In this report, the Commission points out certain fundamental differences between state licensure and nongovernmental accreditation that affect cooperation between their representatives in doing institutional evaluations. It also identifies a number of new California State licensing standards that are consistently more rigorous than those found among the accrediting agencies. But the Commission was unable to assess how well the new Council will enforce those standards because the Council did not assume its responsibilities for this task until January 1, 1991 -- long after the data collection for this study was completed.

Thus, while the Commission can report that some of California's new licensing standards in statute are often more rigorous than some accrediting standards, there is no evidence at present to indicate that the Council's application of these standards will result in a higher level of practice than that upheld by the accrediting associations. This determination should be made over the next few years as the Commission carries out its tasks of reviewing accrediting agencies and evaluating the work of the Council.

2 *The Language of State Oversight and Nongovernmental Accreditation*

Licensure and accreditation

Institutional licensure and accreditation are not just similar institutional evaluation processes that happen to be sponsored by different types of agencies. They are, in fact, quite different in objectives and, even more fundamentally, different in the bases of their authority. The variety of terms used referring to licensure and the similarity of some of the licensing and accrediting procedures tend to create the impression that the various actions we know as authorizing, approving and accrediting, to name a few, are only somewhat different planes of the same generic activity -- institutional evaluation. They are not, as this section will show, and it is desirable for the State's public policy and practice to be clear on this point.

This section discusses first the various terms associated with state oversight of private institutions and then identifies some of the critical differences between licensure and accreditation. These differences are especially important in the decisions about whether, how, and how much the State's licensing processes should rely on accreditation processes.

The terms that occasionally provide some problem in our discussions of state oversight of private postsecondary institutions include *charter, license, regulate, approve, authorize, monitor, and inspect.* Even the term *accredit* is sometimes inappropriately applied to state licensing activities, although there is a fairly strong national consensus that this term should be used only to refer to the oversight responsibilities of private accrediting agencies (Orlans, 1975, p.6).

This difficulty in communication is caused by several factors:

1. California's regulatory policies affecting private postsecondary institutions have changed considerably over the 140 years of its history and they are now undergoing one of the most substantial changes in its entire history.
2. The wide diversity of private postsecondary institutions (accredited/nonaccredited, for profit/nonprofit, degree-granting/vocational, etc.) generally included in present discussions of emerging state policies tends to get overlooked, and terminology that is appropriate for one type of institution may be used less appropriately for other types.
3. The type and extent of state oversight of private postsecondary institutions vary considerably from state to state, and the terminology used to describe the various modes of state oversight is not used consistently throughout the United States.

Chartering and licensing institutions

In the past, State statutes made a distinction between *chartered* and *licensed* institutions that followed the common meaning of the terms:

> **charter** (n) a document, issued by a sovereign or state, outlining the conditions under which a corporation, colony, city, or other corporate body is organized, and defining the formal organization of a corporate body; (v.t.) to establish by charter: to charter a bank.
>
> **license** (n) formal permission from a governmental or other constituted authority to do something, as to carry on some business or profession; (v.t.) to grant authoritative permission or license to. Related to Latin word meaning "to be allowed to" (Random House, 1987, pp. 349 and 1109).

If a distinction can still be made in the appropriate usage of these two terms, it is that the word *charter*

relates to the State's authority to define the conditions under which an enterprise may be established while the term *license* relates to the State's authority to define the conditions under which an enterprise or an individual may engage in a particular activity over a given period of time. Both aspects of the State's authority involve setting standards or criteria in statute or regulation, but the implication of the word *charter* is that these conditions are fixed -- that is, a part of the charter contract -- while licensing standards deal with ongoing activities that may change.

Chartering in California

In California, colleges founded under the earliest statutes (e.g., the Act of 1850) appear to fit the definition of "chartered institutions": the statutes outlined the organizational structure, the size and composition of the governing board, the financial criteria required to begin operations, and the educational domain in which the institution was to operate. No regulations were enacted at the time; and for some period of time the original conditions upon which the institutions were chartered were the only laws governing their operations. Over the subsequent century and a half the statutes were revised and became considerably more regulatory (i.e., prescriptive with penalties for noncompliance).

There is a constitutional basis for observing some care in the regulation of chartered educational institutions. The case of the Dartmouth College Trustees versus Woodward has special relevance. In 1819, following Dartmouth College's challenge of the New Hampshire legislature's efforts to restructure the Board of Trustees, the U.S. Supreme Court found that the 1769 charter granted by the Crown to the Trustees of Dartmouth, a corporation, constituted a contract protected by the Constitution and, thus, was beyond the power of the New Hampshire legislature to abrogate or amend.

Statutory language passed by the California Legislature in 1927 and again in 1939, which amended the Civil Code sections affecting degree-granting institutions, shows the Legislature's careful avoidance of changing the provisions under which educational institutions founded prior to that time were to operate.

> No person, firm, association or corporation other than a corporation incorporated under the provisions of this title, shall have power to confer academic or professional degrees. This provision shall not apply to any university, college or seminary of learning which has been chartered under existing laws as an educational institution with the power to confer degrees, or to any university, college or seminary of learning which has heretofore been given, or whose trustees have heretofore been given, the right to exercise corporate powers and privileges by special legislative act (California Civil Code Section 651a, 1927).
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> •
>
> This section shall not apply to any university, college or seminary of learning which has heretofore been given, or whose trustees have heretofore been given, the right to exercise corporate powers and privileges by special legislative act or which has been chartered under existing laws as an educational institution with the power to confer degrees and has been continuously, since the first day of January, 1939, offered regular resident courses of instruction in such subjects and regularly conducted classes therein (California Civil Code, Section 651a, 1939).

In each of the years cited above, amendments of a regulatory nature were added, and the institutions chartered prior to that year were exempted from these new provisions. In 1927, for example, language was added requiring institutions chartered under the new law to

> . . . file annually with the superintendent of public instruction a verified report showing the number of students of said corporation, the courses of study offered by said corporation, the names and addresses of the teachers employed by said corporation, the subjects taught by them, the degrees, if any, granted by said corporation and to whom granted, the curricula upon which such degrees were granted and any other information concerning the educational work or activities of said corporation that may be required by said superintendent of public instruction (California Civil Code, Section 651b, 1927).

In California the use of the term *chartered* in con-

nection with educational institutions established before 1958 is virtually synonymous with *incorporated*. From 1850 -- the year in which the first statute providing for the founding of degree-granting institutions in this State was passed -- to 1958, the only way a college or university could be established was to become incorporated as a non-profit corporation; therefore, referring to degree-granting institutions founded prior to 1958 as "chartered institutions" may be appropriate, but this status does not preclude the Legislature from imposing new regulations governing the operation of these institutions.

Currently, prevailing legal opinion holds that corporate (or charter) status does not shield an institution from the burden of newly imposed regulations:

> All grants of corporation status (and resulting privileges) are subject to legislative amendment and repeal. This power of the state is implied generally, subject to reasonable due process and "grandfather"-privilege continuation in proper cases (Oleck, 1988, p. 362).

The consequence of this position is that there is at present no practical distinction between a chartered institution and a licensed institution where the issue of governmental supervision and regulation are concerned.

Licensing institutions in California

The State's provisions for licensing private postsecondary institutions have a history that is different from those for its chartered colleges and universities. A *licensed* institution is one which is subject to periodic review by the State under standards and procedures that may be amended by the Legislature. The California Legislature changed the policy of licensing institutions in 1958:

> A person, firm, association, partnership or corporation [may be] authorized by the Superintendent of Public Instruction to issue specific diplomas (i.e., degrees, certificates or transcripts). Such permission shall be granted upon a year-to-year basis by the Superintendent of Public Instruction upon the submission of information to him that the courses of instruction, and the faculty or requirements of such applicant will afford students or require of students a course of education comparable to that being furnished by persons, firms, associations, partnerships and corporations offering similar instruction and complying with other subdivisions hereof (California Education Code, Section 24206 (f), 1958).

Prior to 1958, "for profit" vocational schools were licensed under rules contained in the Business and Professions Code. In a sense, the Amendments of 1958 began the legislative process that finally brought the oversight of private vocational schools and private degree-granting schools together under one statute. As a result, references to hospital schools *licensed* under the Health and Safety Code, vocational schools *approved* by a licensing board under the Department of Professional and Vocational Standards, institutions *accredited* for teacher training by the State Board of Education, institutions *approved* by the Bureau of Readjustment Education of the Department of Education, as well as the degree-granting institutions *authorized* by the Superintendent of Public Instruction (mentioned above) all reflected a licensing mode in which annual (or at least periodic) reports and a renewal of an institution's license would be required.

A remnant of the old chartering law continued in the 1958 statute: a provision allowing for a corporation to be formed for educational purposes and confer diplomas if it submitted an affidavit stating that the corporation owned property in an amount not less than $50,000 (California Education Code, Section 24206 (a), 1958). But the venerable chartering law was so emasculated (it no longer contained any reference to trustees, nonprofit status, courses of study, faculty, moral conduct, all covered by the Act of 1850 and its subsequent permutations) that it did not even require the annual reporting that kept licensed institutions in touch with their licensing boards and the Superintendent of Public Instruction.

In one sense at least, the 1958 statute was the nadir of lawmaking affecting private postsecondary institutions in California. It not only set the stage for the diploma-mill era by providing for the $50,000 schools to operate for profit without monitoring by the State, it provided a definition of diplomas which treated degrees, vocational certificates and transcripts as identical documents, introduced all of the various terms *approved, licensed, authorized,* and

accredited italicized in the above paragraph without making any distinction among them, and provided the opportunity for individuals to establish profit-making degree-granting institutions without establishing any standards for their operation.

In brief, the 1958 statute borrowed the language of State licensing used for regulating private for-profit vocational schools and introduced it into the oversight of degree-granting institutions. Institutions of all types were authorized, approved, licensed, and even "accredited" by the same State licensing board. This meant that in contrast to the rather static relationship between chartered institutions and the State, the privilege to operate a licensed institution was reviewable under rules that would change from time to time.

While the 1958 change in public policy allowed for-profit degree-granting colleges and universities to be formed and this policy seems to have led over time to an increase in regulatory statutes, the distinctions between nonprofit and for-profit institutions tended to become overlooked. In fact, it was not until 1989 that the distinction again became recognized in statute. In this year, nonprofit status became a basis for several important exemptions included in both Assembly Bill 1402 (Waters) and Senate Bill 190 (Morgan).

1. Section 94316.1 (a) This article applies to private postsecondary educational institutions other than institutions that (1) are incorporated and lawfully operate as nonprofit public benefit corporations pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code and are not managed or administered by any entity for profit . . . [Note: This language exempts a vocational school from having to meet the rigorous requirements of Article 2.5 of Chapter 3 of Part 59 of the Education Code titled "The Maxine Waters School Reform and Student Protection Act of 1989."]
2. Section 94302 (t) . . . The following are not considered to be a private postsecondary or vocational educational institution under this chapter: . . . .
   (5) A nonprofit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination . . .
3. Section 94303 Articles 1.5 and 2 of this chapter, subdivision (c) of Section 94320, (*et alia*) . . . shall not apply to institutions which are accredited by the Western Association of Schools and Colleges and are either (1) incorporated and lawfully operate as nonprofit public benefit corporations pursuant to Part 2 of Title 1 of the Corporations Code and are not managed or administered by any entity for profit . . .

In all three cases, the nonprofit status is significant in exempting from important licensing requirements the institutions holding such status. This policy echoes that of the State's earlier chartering law under which nonprofit status was the only form of organization allowed and during which the regulatory aspects of State law were minimal.

Similarities and differences between accreditation and state regulation

To the casual observer of voluntary accreditation and state regulation, the two processes seem quite similar. Both are based on a comprehensive set of standards that must be met by institutions, and both require some periodic review of these institutions, including a site visit, to determine whether they are complying with those standards. Nonetheless, the two processes differ markedly in (1) the source of their authority, (2) the homogeneity of the institutions covered in the process, (3) the geographic scope of their activities, (4) the primary emphasis and objective of their evaluation process, and (5) the consequences to the institution of their affirmative and adverse decisions.

1. *Source of authority*

Accreditation: Accreditation in postsecondary education is a self-regulatory function conducted by private, incorporated nongovernmental associations of educational institutions. Accrediting associations are governed by boards composed primarily of representatives from their member institutions or trade association. The United States Secretary of Education requires that, as a criterion for continued "recognition" by the Secretary, the accrediting board must include "representatives of the public in its policy and decision-making bodies, responsible for its accrediting activities or for the retention of advisors who can provide information about issues

of concern to the public" (United States Department of Education, 1988).

State regulation: State licensure of postsecondary educational institutions is a governmental function conducted by a State licensing agency. Licensure is carried out under the State's authority in the Tenth Amendment of the United States Constitution. Under California's Private Postsecondary Education Reform Act of 1989, the State's licensing laws are administered by the Council for Private Postsecondary and Vocational Education, whose members are appointed by elected State officials and, through this means, are directly accountable to the people of California.

2. *Homogeneity of institutions*

Accreditation: Accrediting associations tend to serve groups of institutions which offer similar programs and possess similar types of expertise. A certain homogeneity of membership enables these associations to carry out their peer evaluations with a degree of consistency that would be more difficult to obtain if they were required to solicit evaluators beyond their membership.

State regulation: In California, the scope of the State licensing agency's authority extends to all private postsecondary institutions operating within the State's boundaries except those exempted from Chapter 3 of the Education Code. It covers a wide variety of institutions which include both degree-granting (undergraduate and graduate), some religious institutions, vocational schools, and continuing education programs.

3. *Geographic scope*

Accreditation: The geographic scope of the institutional membership of accrediting associations extends beyond state boundaries: it is either regional or national in reach and some accrediting bodies, such as the Association of Theological Schools in the United States and Canada, accredit institutions in Canada and other countries.

State regulation: By definition, state regulation covers only those institutions operating within the state. States differ, however, in the extent to which they regulate the out-of-state operations of institutions headquartered in them.

4. *Primary emphasis and objective*

Accreditation: The primary emphasis of accreditation standards differs markedly from licensing regulations. To promote integrity and quality among postsecondary institutions, these associations establish threshold standards that must be met for membership. After the institution is accredited, institutions are expected to devote themselves to periodic self-evaluation and peer review. This is the primary emphasis of the accrediting process: continuous self-evaluation and upgrading of the quality of the education program. As a result, accreditation standards tend to be stated in broad, flexible guidelines that can be applied to applicant institutions as threshold requirements and may also be used as goals for institutional improvement after initial accreditation is awarded. Besides helping to improve the quality of institutions, accreditation enables students to transfer to another accredited institution with less difficulty than they might from an unaccredited school and enables students to obtain federal financial loans.

State regulation: The primary objective of State licensure is to ensure that institutions and the individuals employed by them comply with minimum standards of quality and consumer protection. The State requires continual compliance with every aspect of the law; the institution is subject to ongoing monitoring by its licensing agency.

5. *Consequences of decisions*

Accreditation: If an institution does not comply with one or more of an accrediting agency's standards, the severest action the agency can take against the institution is to remove its accreditation. Accreditation agencies do not levy fines, seek legal action against their members, or require an institution to close. Since accreditation is a condition attained by institutions, not individuals, there are no individual sanctions which may be imposed upon an individual as a result of noncompliance with accreditation standards.

Both the federal government and state governments use accreditation as "reliable authorities as to the quality of training offered by institutions and programs." In California, various State agencies require a degree or other training from an accredited institution as an indicator of satisfactory prepara-

tion for a professional licensure examination or for employment. The current issue regarding the use of accreditation "in lieu of state licensure" of an institution goes beyond the use of accreditation as an indicator of quality. It deals with the question of whether California should continue to use private accrediting agencies as its policing arm for protecting its citizens from fraud and misrepresentation in private postsecondary institutions. The State continues this practice by delegating authority to the two commissions of the Western Association of Schools and Colleges (WASC) all responsibility for maintaining standards among the WASC members and exempting these institutions from State licensing laws. As a result, individuals such as owners, administrators, and recruiters of WASC-accredited institutions who would otherwise be covered under various sections of the 1989 Reform Act are also exempt from the law.

State licensure: An institution cannot operate legally unless it has received an affirmative decision by the State's licensing agency. The most stringent action the agency can take against an institution -- removal of its license to operate -- results in closure of the institution. In addition, the licensing agency has the authority to levy fines. Under the 1989 Act, a person or private postsecondary institution that does not comply with the standards and other provisions of the law may suffer a fine of up to $50,000, and individuals may be imprisoned.

3 *Legitimate State Interest in Regulating Private Postsecondary Education*

REGULATING private postsecondary institutions is one of several fundamental provisions the State makes for ensuring that adequate postsecondary opportunities are available to its citizens. The purposes of the regulations are (1) to set minimum standards of educational quality and consumer protection below which institutions are not allowed to operate and (2) to provide students a recourse through law if the advertised and contracted services are not provided. The specific needs, problems and areas of potential abuse addressed by the Legislature are termed the "legitimate interests of the State."

State interests underlying licensing statutes

The State interests on which California's licensing statutes are based are explicitly detailed in legislative intent language found in Education Code Sections 94301, 94316 and 94316.05. Briefly stated, these interests include protecting citizens from substandard educational operations and unethical, unfair and fraudulent business practices.

Legislative concern with educational quality and ethical practice in private postsecondary institutions can be found in the earliest statutes governing the chartering of degree-granting institutions in this State, but a rapid growth in regulatory statutes based on these concerns can be seen to parallel the development of two important conditions in which marginal private postsecondary institutions have thrived during the past decades: (1) allowing for-profit ("proprietary") postsecondary institutions to grant degrees, and (2) subsidizing student enrollment through State and federal student financial aid. The former condition provided opportunity and motivation to abuse the profit-making privilege, and the latter condition increased the rewards for breaking the law.

The growth of proprietary schools in California began to increase rapidly after 1958, in part because the Legislature in that year amended the Education Code to allow for-profit degree-granting colleges to operate in the State. Prior to this year, proprietary schools could exist as vocational institutions, but private degree-granting institutions were required to incorporate as non-profit entities. The opportunity to start a "mom and pop" university with as little as $50,000 in assets, offer substandard education (or no education at all) and pocket the "profit" increased the motivation for fraudulent activities in this segment of proprietary education. But few proprietary degree-granting institutions became accredited. Therefore, these unaccredited institutions are not a part of this study.

The State has always allowed for-profit vocational schools to operate within its borders. Where a State interest in the health and safety of its citizens was clearly apparent, State regulation also existed, and a licensing board -- generally housed in the State's Department of Consumer Affairs (or in one of its predecessor agencies) -- provided the oversight of the licensed schools. The year 1958 was also a year of change for proprietary vocational schools in California, for in that year the private postsecondary bill that allowed proprietary *degree-granting* institutions to operate in the State began the move to centralize private institution licensure under one agency: the Bureau of School Approvals -- more recently titled the Private Postsecondary Education Division -- of the State Department of Education.

Over the past several decades, a large number of California's proprietary schools have become accredited and have gradually increased their participation in federal programs. During the 1950s and 1960s, veterans who were students at these schools could receive G.I. benefits. These schools' time-efficient programs were immensely popular with the veterans; this popularity helped to bolster the proprietary schools' efforts to become eligible to partici-

pate in other federal programs including student financial aid programs.

In 1972, with the passage of the federal 1972 Amendments to the Higher Education Act, students at proprietary schools that were accredited by an accrediting agency recognized by the United States Commissioner of Education were allowed to participate in most student financial aid programs funded under this Act. The first three national accrediting associations to be recognized by the Commissioner were the National Association of Trade and Technical Schools, the Association for Independent Schools and Colleges, and the National Home Study Council.

Without doubt the most prominent cause of the increased regulation of accredited proprietary schools in the State has been the abuse of the federal student aid programs by a number of these institutions.

Assembly Bill 1402 expressed the situation in these words:

> The Legislature further finds and declares that many students who enroll in these schools pay their tuition from the proceeds of loans and grants guaranteed or provided by the State and federal governments. Students who leave schools before the completion of instruction, often because of misrepresentations and inadequate instruction, do not receive adequate refunds of tuition for the instruction not received. Students remain liable to repay student loans but are frequently unable to do so in part because they were unable to obtain the proper educational preparation for jobs (Education Code Section 94316).

Conclusions

In general, a review of the State's interests underlying the regulation of private postsecondary institutions leads to two inescapable conclusions:

- The first is that while substandard educational operations, unethical, unfair and fraudulent business practices may be found in a variety of educational environments, the Legislature has shown a particular concern for ensuring that *proprietary* institutions -- both degree-granting and vocational -- be required to meet minimum standards of good practice in both the educational and business sides of their operations.
- The second conclusion is that the availability of federal and State student financial aid has increased the urgency for the State to have strong consumer protection laws governing accredited proprietary institutions. Available anecdotal information strongly suggests that the most egregious offenses against good educational practice and ethical and legal business operations tend to occur in institutions where both the profit motive and federal funds are present.

4 *Differences Among Accrediting Agencies*

CALIFORNIA'S standards and procedures for licensing private postsecondary institutions are contained in statute created by Senate Bill 190 and Assembly Bill 1402 in 1989 and subsequent "trailer legislation" passed in 1990. These new statutes are quite extensive and detailed. Assembly Bill 1993 directed the Commission to determine how fully each individual accrediting agency's standards and consumer protection requirements encompass the standards and procedures prescribed in statute. In doing this, the Commission focused its investigation on the following seven criteria:

1. The completeness and rigor of accrediting standards covering the State's licensing interest in the areas of institutional stability, institutional integrity, and consumer protection;
2. The accrediting agency's requirement of an annual report, its completeness in comparison with that required by the State, and the level of financial reporting in the annual report;
3. The weighted average student loan default rate for the institutions accredited by each association;
4. The number of student complaints per accrediting agency that are received by the State's licensing agency;
5. The number of cases currently filed by the Attorney General against institutions accredited by each accrediting agency;
6. The number of limitation, suspension, and termination actions against the accrediting agency's institutions taken by the California Student Aid Commission; and
7. The degree of cooperation offered by the accrediting body as determined by its willingness to share such information as copies of team reports, substantive change proposals received from their California institutions, and consumer complaints about institutions in this State.

In the first criterion, the Commission defines the terms *institutional stability, institutional integrity,* and *consumer protection* as follows:

- *Institutional stability* means, in this context, financial solvency and responsibility, including both the standards required of accredited institutions and the procedures used to secure the information about how those standards are met.
- *Institutional integrity* covers accrediting standards relating to the full and accurate representation of the institution to its constituencies, including the honesty of its advertising and the integrity of its recruitment practices as well as the character of its leadership.
- *Consumer protection* involves the standards or rules governing the treatment of students in their contractual relationship with the institution, including requirements dealing with contract disclosure requirements, the cooling-off period, the refund policy, student tuition refund policy, and student complaints.

Display 1 on pages 20-23 summarizes the Commission's findings regarding all seven criteria for 14 of the accrediting agencies that currently provide the sole accreditation for one or more institutions in California. (Not included in that display are specialized or programmatic accrediting agencies that only accredit programs or divisions of regionally accredited institutions and the Committee of Bar Examiners of the California State Bar, which is neither a regional nor nationally recognized accrediting agency.)

The following paragraphs compare California's new laws with relevant standards of the accrediting agencies on the three major policy areas of institutional stability, institutional integrity, and consumer protection.

(text continues on page 24)

DISPLAY 1 Selected Characteristics of Accrediting Agencies Operating in California

Characteristic	Accrediting Bureau of Health Education Schools	Accrediting Commission for Community and Junior Colleges, WASC	Accrediting Commission for Senior Colleges and Universities, WASC	Accrediting Council for Continuing Education and Training	American Association of Bible Colleges	American Osteopathic Association	Association of Independent Colleges and Schools
Institutions Accredited							
Nationally	177	155	143	414	93	15	937
California	23	142	135	67	6	1	78
Length of Time Between Reviews	Six years.	Five years.	Eight years maximum.	Variable: from one to five years.	Initial five years; ten years thereafter.	Seven years.	Six years.
Institutional Stability							
Type of Interim Monitoring	Annual report without financial data.	Annual report without audited financial statement.	Five-page annual report form due each March 10.	Annual report with statistical analysis.	Annual report, with audited financial statement.	Annual report with audited financial statement.	Annual report without an audited financial statement.
Fiscal Reports Required to be Audited	No.	Yes, annually.	Yes.	No, except when requested.	Yes.	Yes, annually.	Yes.
Accreditation Transferable to New Owners	No.	No.	No, unless OK to the Substantive Change Committee.	No.	No, unless OK following substantive change review.	No.	No.
All New Branches Are Visited	Yes.	Only if the Commission deems it necessary.	No, unless the Substantive Change Committee requires it.	Yes.	Yes, if it is a major substantive change.	Yes, if it is a major substantive change.	Yes.
Institutional Integrity							
Qualifications of Executive or Owner	Institution must have a "qualified administrative staff."	Staff must be "qualified by training and experience to achieve and promote the educational objectives of the institution."	Staff must be "qualified by training and experience to enable the accomplishment of institutional purposes."	No specific qualifications, but "programs must be capably and responsibly managed."	Administrative officers must "be qualified individuals who offer administrative expertise in their particular area of responsibility."	Chief operating officer must have an earned osteopathic degree.	Sheet of data required on administrator's prior education and experience.
Honesty of Advertising	Yes: 16 items required.	Promotional statements must be verifiable.	Representations to prospective students must be accurate.	Advertising makes "only justifiable and provable claims."	Communication with prospective students must "exhibit the highest levels of integrity."	"A catalog and/or other appropriate documents" must be published.	Promotional literature must be "factual with respect to services offered or benefits received."
Integrity of Recruitment	Yes: Field staff must be controlled.	Representations to prospective students are consistent with institutional practices.	Oral communications must be as accurate as written materials.	"Recruiting personnel, if employed, make only justifiable and provable claims."	Communication with prospective students must "exhibit the highest levels of integrity."	No specific standard.	"Recruiting shall be ethical and compatible with ... educational objectives."

Association of Theological Schools in the United States and Canada	Council on Chiropractic Education	Foundation for Interior Design Education Research	National Accrediting Commission of Cosmetology Arts and Sciences	National Association of Trade and Technical Schools	National Home Study Council	North Central Association of Colleges and Schools	Northwest Association of Schools and Colleges	Southern Association of Colleges and Schools, Commission on Colleges
159 (U.S) 18	15 5	90 11	1,776 228	1,243 197	73 15	936 15	147 3	776 7
Ten years maximum.	Five years.	Three or six years.	Variable: from one to five years.	Five years.	Five years.	Not fixed, but five-year max. for initial accred.; ten-year max. thereafter.	Accred. must be re-affirmed at least every five years.	Ten years.
Annual report with audited financial statement.	Semi-annual reports and meetings with the Council.	Biennial report.	Annual report.	Annual report.	Annual report without an audited financial statement.	Annual reports, required addressing specific areas.	Annual reports on changes.	Annual reports on changes during the year.
Yes, annually.	Yes, annually.	No.	No, except if fiscal problems are apparent.	Yes, annually.	Yes, initially and if the Council wants.	Yes, annually if the visiting team requests it.	Yes, initially and every five years.	Yes, every ten years and on the Association's request.
No.	No specific standard.	No specific standard.	No, unless OK following substantive change review.	Yes, although NATTS will review.	No.	Yes, but with evaluation visit scheduled in one year.	No.	Yes, but the Association will review.
Yes.	No specific standard.	Yes.	Yes.	Yes.	N/A: No branches exist.	Yes, typically, but not always required.	Yes.	Yes.
"Administrative officers adequate in number and ability . . . to administer the institution."	Board must select a "well-qualified chief administrator."	No, but "quality of the faculty" is of concern.	"Management personnel" must be "knowledgeable."	"Administrative personnel have established records of integrity" and proper qualifications.	"Top . . . administrators possess appropriate backgrounds, qualifications, and experience."	Only the academic credentials of administrators must be published.	Professional training and experience of principal administrative officers is of interest to the Association.	Administrative officers must possess credentials, experience and/or demonstrated competence."
Disclosure and Confidential Policy now is part of standards.	No specific standard.	No specific standard.	Policy prohibits "fraudulent, deceptive, misleading or false" advertising.	"Advertising materials are truthful and avoid leaving any false" ideas.	"Clear and provable statements" are required and cannot offend public officials.	Publications must contain "accurate information."	"All statements . . . should be clear, factually accurate, and current."	"Publication policies . . . must exhibit integrity and responsibility."
No specific standard.	No specific standard.	No specific standard.	"Student recruitment reflects sound ethical and legal practices."	11-point standard on student recuitment.	Institution must control its field representatives.	Admissions policies must be consistent with inst. miss.	Unscrupulous recruitment must be avoided.	Institution must "insure integrity in all its operations."

(continued)

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DISPLAY 1 (continued)

Characteristic	Accrediting Bureau of Health Education Schools	Accrediting Commission for Community and Junior Colleges, WASC	Accrediting Commission for Senior Colleges and Universities, WASC	Accrediting Council for Continuing Education and Training	American Association of Bible Colleges	American Osteopathic Association	Association of Independent Colleges and Schools
Consumer protection							
Refund Policy Required	Yes: Students must be notified on registration.	Policy must be clearly stated and consistent with ACE policy.	Policy must be precise, accurate, and current.	Explicitly stated, fair and equitable refund policy.	Policy required to be stated in the catalog.	Policy required to be stated in the catalog.	Yes: "definite, equitable, and established refund policy."
Clarity of Contract with Students	Yes: Changes must be reviewed by the Bureau.	Student obligations must be clearly stated.	Representations must be precise, accurate, and current.	Enrollment agreements "match standardly accepted practices" and are clear.	No specific standard.	Rights and responsibilities of students must be stated in the catalog.	Yes: AICS reviews the catalog to ensure clarity.
Provision for Students to submit Complaints to an External Agency	No.	No.	No.	Yes.	Yes.	Yes.	No.
Posting of That Provision Required	No.	No.	No.	Yes.	No.	No.	No.
Complaint Rate During 1989 (Accred.)*	None.	0.3	0.6	Unknown.	None.	None.	0.3
Complaints During Early 1989 (PPED)**	Eight.	Four.	Eight.	Eleven.	None.	None.	Forty-Six.
Other characteristics							
Student Loan Default Rate	32.9%	34.4%	12.6%	32.0%	19.4%	3.4%	32.7%
Pending Cases Brought by the Attorney General	One.	None.	None.	Two.	None.	None.	None.
Adverse Student Aid Commission Actions, 1985-1990	None.	None.	None.	Five.	None.	None.	Six.
Reliance on State Licensure	Yes: "Properly licensed or chartered."	Yes.	Yes.	Yes.	Yes.	Yes.	Yes.
Team Report Shared with State Licensing Agency	Report unavailable without subpoena.	Report released with institution's approval.	Report released with institution's approval.	Report released with institution's approval.	Report released with institution's approval.	Report released with institution's approval.	Report released with institution's approval.
Joint Visits with State Licensing Agency	No, but state agency observer may participate.	Not applicable.	Not applicable.	No, but state agency observer may participate.	No, but state agency observer may participate.	No, but state agency observer may participate.	No, but state agency observer may participate.

Note: Not included are the Middle States Association of Schools and Colleges, whose members have no California branches, and the New England Association of Schools and Colleges, which accredits only one institution with a branch in California.

Source: California Postsecondary Education Commission.

Association of Theological Schools in the United States and Canada	Council on Chiropractic Education	Foundation for Interior Design Education Research	National Accrediting Commission of Cosmetology Arts and Sciences	National Association of Trade and Technical Schools	National Home Study Council	North Central Association of Colleges and Schools	Northwest Association of Schools and Colleges	Southern Association of Colleges and Schools
Yes: "Equitable policy of . . . tuition refunds."	No specific standard.	No specific standard.	Yes: Policy must comply with NACCAS policy.	Yes: "Fair and equitable refund policy" must comply with NATTS policy.	Yes: "equitable tuition adjustment" policy required.	Yes: "Refund policies" must be published.	Yes: Refund policy must be published.	Yes: Policy and procedure must be published.
No specific standard.	Institutions must comply with generally accepted standards of professional ethics.	No specific standard.	Yes: The agreement "clearly outlines the obligations of both the school and the student."	Yes: Must meet 19-point Enrollment Agreement Checklist.	Yes.	Catalog must be accurate.	Catalog must be current and accurate.	Policies "must be clearly stated, published, and made available."
No	No.	No.	No.	Yes.	No.	No.	No.	No.
No.	No.	No.	No.	Yes.	No.	No.	No.	No.
None.	None.	None.	None.	Unknown.	1.4	Unknown.	None.	None.
None.	Two.	None.	Five.	Fifty-Five.	Seven.	One.	None.	Two.
9.0%	11.4%	11.4%	34.3%	27.%	44.3%	15.6%	5.2%	10.7%
None.	None.	None.	None.	One.	One.	None.	None.	None.
None.	None.	None.	Six.	Eight.	None.	None.	None.	None.
Yes.	Yes.	Yes.	Yes.	Yes.	Implicitly but not explicitly yes.	Yes.	Yes.	Yes.
Report available upon request.	Report unavailable without subpeona.	Report unavailable without subpoena.	Report available only from institution.	Report unavailable without subpoena.	Information available if a state official participates in the visit.	Report available only from institution.	Report available only from institution.	Report available only from institution.
No, but state agency observer may participate.	No, but state agency observer may participate.	No, but state agency observer may participate.	No, but state agency observer may participate.	No, but state agency observer may participate.		No, but state agency observer may participate.	No, but state agency observer may participate.	No, but state agency observer may participate.

* Number of complaints per accredited California institution received by the accrediting agency during 1989.

** Number of student complaints received by the Private Postsecondary Education Division during early 1989.

*** Aggregate weighted default rate as of September 1989 for institutions operating in California.

Institutional stability

Virtually every accrediting agency surveyed by the Commission in 1988 and 1990 indicated that the lack of financial stability among its member institutions was among its greatest concerns. An eroding financial base can, over time, affect the quality of an institution's educational program and threaten the integrity of the enterprise.

State standards for stability

In the Reform Act, measures were taken to ensure that licensed institutions are financially solid (financial standards and oversight of institutional expansion) and to ensure that the State has current information on changes that may occur in their financial condition (procedures for annual reporting).

Financial standards: Both degree-granting and vocational institutions are required to meet the financial standards included under Education Code Section 94311.4 and the regulations implementing this section of the code. Section 94311.4 states in part that an institution shall be considered "financially responsible" if it provides the services and programs it advertises, meets the appropriate program standards required by the State, and is able to comply fully with Section 94312 of the Education Code, the primary financial requirement of which is to pay timely tuition refunds. Additionally, part (b) of this Section provides specific indicators of financial weakness: (1) operating losses in the two most recent years, (2) a ratio of current assets to current liabilities of less than 1.25 to 1, or (3) a sustained material deficit in the institution's unrestricted operating fund over the past two years. These standards are the same as those required by the federal government of institutions participating in Title IV, HEA programs, except that the current ratio required by the federal government is not less than 1:1 (34 CFR 668.13).

If the Council finds that an institution does not meet the standards of financial responsibility, the Council may (1) require an immediate audit of the institution and the submittal of a "financial plan for establishing financial responsibility" [Section 94311.4 (c)], (2) place the institution on probation [Sections 94310 (e) and 94311 (i)] or (3) take action to close the institution [Section 94330 (k)(1)].

Vocational institutions that are subject to Article 2.5 of the new law must meet the financial standards in Section 94316.6 which, while substantially the same as those mentioned above, also defines in law very specific limitations regarding what may or may not be considered assets and liabilities.

Institutional expansion: The practice of expanding the services of an institution by establishing a branch campus at a distant location was widely abused throughout the 1980s. The fact that an institution could open a new campus and carry with it the accreditation of its "home campus" enabled the new campus to participate immediately in the federal student financial aid programs that otherwise, under federal regulations, would have required a new or unaccredited institution to wait for two years. In their 1988 report on *Consumer Rights and Accountability in Postsecondary Vocational-Technical Education*, Brian Fitzgerald and Lisa Harmon state (p. 63):

> Since an institution's quality can quickly deteriorate, accrediting commissions have limited ability to control quality and ensure accountability. Under the most severe pressures in this environment, association and commission staff members suggest an excellent institution can become a problem in only a matter of months. Branching and changes in ownership potentially exacerbate this problem.

California now has several different legal requirements affecting the founding and operating of a branch campus:

- First, if a degree-granting institution that is already approved wishes to open a branch location, under the provisions of the current draft regulations it would be required to advise the Council of its intentions and seek the Council's approval.
- Second, the branch campuses of accredited out-of-state institutions must be approved by the Council. Representatives of these institutions have lobbied hard, and with some success, to limit the Council's review of *all* sites at which they operate in the State. While the new legislation does not prohibit the Council from examining every branch of an out-of-state institution, it strongly implies that fewer than all of the sites should be examined. Education Code Section 94310(i)(4)(C) states that "the Council shall develop a procedur-

al rationale to justify the number of sites to be visited by the state in the review of the institution's operations in California." At the writing of this report, the Postsecondary Education Commission's proposed draft regulations for this part of the statute provide that the site visits for these branch campuses should include "at least one off-campus site for each degree program offered by the institution in California and . . . no less than one half of all the sites in California at which the institution offers a degree program" (Article 3, Regulation 315 (b) of the Commission's draft regulations).

- The third portion of the statutes affecting the State's review of branch campuses involves the review of vocational schools (Education Code Section 94311). This statute is far more explicit about the Council's responsibility to ensure that there is an inspection of every branch or satellite campus by a representative of the Council. Additionally, the Council may inspect the main campus of an institution that is applying to add a branch campus [Section 94311 (b)].

This requirement that the site be visited in all cases is an important addition to State policy regarding the operation of a branch or satellite operation. The actual personal verification of facilities, equipment, and other resources specific to the offering of the programs to be approved for a branch campus has been found to be absolutely necessary. State policy at present is not so clear regarding the necessity of such verification for approval of a new program at a site that has already received approval, although the necessity for this verification is just as strong as for that of a new branch location. Presumably, the clarification of this procedure will be within the new Council's authority to address.

Monitoring institutional stability: Since the health of an institution can change very quickly, reliable information about the conditions of licensed institutions is very important to the State. The statutes require an annual report both for degree-granting institutions and vocational schools, although the nature of that report differs according to the type of institution. In part, these differences are apparent in the sections below dealing with the required financial report:

- Degree-granting institutions (Section 94310) and vocational schools (Section 94311) not under Article 2.5 are subject to Section 94312.2 and 94316.6(b)(c) which require that an institution provide information on an annual basis demonstrating that it (or its parent corporation) has sufficient funds and accounts receivable to pay all operating expenses due within 30 days. The statute does not specify what form this financial report shall take.
- Vocational schools under Article 2.5 must submit an audited financial statement at least every three years (Section 94316.22). Additionally, at the time of filing of each return and report of wages pursuant to Section 1088 of the Unemployment Insurance Code, the institution must submit a copy to the Council. For the years in which an audited report is not submitted, the institution must file a "reviewed" financial report if its gross income is $100,00 or more, or a "compiled" financial report if its income is less than $100,000.

Accreditation provisions for institutional stability

Financial standards: As noted above, the State's institutional stability standards contain fairly specific financial health standards, including the requirement that institutions must maintain a ratio of current assets to current liabilities of 1.25 to 1 and avoid operational deficits in two successive years. This standard is more rigorous than the stated policy of most accrediting associations. For example, the North Central Association of Colleges and Schools (NCACS) has only two general standards relating to the adequacy of financial resources: 4.a. -- "The institution has financial resources sufficient to support its activities" -- and 4.b. -- "The institution has its financial statements externally audited on a regular basis by a certified public accountant or state audit agency" (1990, p. 14). In addition, NCACS considers financial resources as an essential component in the meeting of its Criterion Two, "The institution has effectively organized adequate human, *financial*, and physical resources into educational and other programs to accomplish its purposes" [emphasis added].

The Commission on Colleges of the Northwest Association of Schools and Colleges takes an altogether different approach, but it leaves the determination of adequate stability to the judgment of its accrediting commissioners. Its Standard II, "Finance,"

which fills five full pages in the 1988 edition of its *Accreditation Handbook* directs in exquisite detail the various aspects of financial resources to be reported -- for example, sources of income; distribution of expenditures; financial planning; endowments and/or financial reserves; stability of income over a period of three years by source of income; level of debt and debt service; organization of business and financial functions of the institution. The primary standard that runs throughout these reporting requirements, however, is the single measure for accrediting an institution: "the income . . . is *adequate* to its needs," "institutions should provide for *adequate* financial reserves," "the traditional sources of income should collectively reflect *adequacy* of financial resources for the support of specialized . . . programs" (italics added), with the definition of *adequate* and *adequacy* to be determined in each case by the NCACS commissioners.

The contrast of these general accrediting association standards to the State's specific standard illustrates a pervasive difference between the two approaches to institutional evaluation: State licensing standards, because they are expressed as law, are purposefully and necessarily explicit (such as "1.25:1"), while accrediting standards are purposefully -- and probably necessarily -- general (such as "*adequate* financial reserves").

In matters of financial stability, therefore, accrediting standards do not accomplish the same purpose the Legislature intended to accomplish in its statutes by establishing clear statutory standards for "sufficient financial resources."

Review of new branches: The previous discussion of the State's standards and procedures for licensing branches of institutions indicated that rapid, uncontrolled branching of institutions without proper review of the new branch site, the institution's financial condition and its program quality can be destabilizing to the institution. California statutes require that each new branch be reviewed, visited and approved by the Council prior to beginning its operations.

The practice of accrediting agencies is similar, but not all agencies require a visit. Only nine of the 16 agencies active in California have a policy that, without exception, requires all new branches to be visited before an institution's accreditation can be extended to the branch. Several others reserve the right to require a visit if their commission deems the new branch to be a substantive change. The importance in the visit lies in the fact that the various resources (such as physical facilities, library, and faculty) accredited as a part of the main institution may not be available to, or at least sufficient for, the students of the new branch. Accrediting agencies that do not routinely visit new branches of their member institutions -- and this includes the two WASC Commissions, the American Association of Bible Colleges, the American Osteopathic Association, the Council on Chiropractic Education, and the North Central Association -- do not appear to meet the procedural requirements of the State's licensing law. Some of these agencies -- the Senior Commission of WASC is an example -- have a thorough application review for new branches as a part of their "Substantive Change" process. The WASC staff meets with the applicant institution's representatives to discuss the details of proposed off-campus programs and often follows up with a site visit. But unless these accrediting agencies visit each and every proposed new branch, their procedures cannot be said to be as comprehensive as those required by State licensing statute.

Institutional integrity

The phrase *institutional integrity* covers a broad spectrum of values, many of which may be consonant with the intent of the California Legislature in enacting the Private Postsecondary and Vocational Education Reform Act but would not be appropriately addressed through law. The phrase, as it is sometimes incorporated in the language of accrediting commissions, can include such diverse values as academic freedom, the right of individuals to privacy, and the promotion of an institutional environment which encourages an open, candid assessment of its strengths and weaknesses.

State standards for institutional integrity

California's statutes do not deal with these desirable qualities, but they do cover the legal boundaries of four other characteristics with some explicitness: (1) the character of institutional owners, (2) the absence of malfeasance on the part of the institution's administrators and instructors that is "sub-

stantially related to the qualifications, functions or duties" of their business or profession (California Business and Professional Code, Section 480), (3) the fiscal integrity of the institution, and (4) the probity of an institution's recruitment efforts. The essence of the statutes on each of these topics is as follows:

Institutional owners: Section 94330(b) requires that the owner(s) sign and certify the application under oath. Section 94330(g), (k)(3), and (k)(4) include among the reasons for denying a license to an institution:

> (g) A finding in any judicial or administrative proceedings that an owner had violated Chapter 3, Part 59 of the Code or that any grounds for denial exist as set forth in Section 480 of the Business and Professional Code;
>
> (k)(3) A finding that an owner is not in compliance with the financial standards in Section 94311.5 of the Code;
>
> (k)(4) A finding that an owner had unpaid liabilities stemming from the operation of a formerly owned institution.

Section 94316.6(h) prohibits an owner who has been found "in any criminal, civil, or administrative proceeding to have violated any law" connected with State or federal financial aid from entering into an agreement with a student.

Administrator and instructor propriety: The State's statute requiring that every administrator and instructor must hold "an applicable and valid Certificate of Authorization for Service" affects only the institutions which do not offer degrees and operate under Education Code Section 94311. This requirement is intended both to ensure adequate academic, experiential, and professional qualifications on the part of *vocational* administrators and instructors and to ensure that these individuals have not been involved in crimes that are substantially related to the educational activities in which they are involved.

Fiscal integrity: Where the fiscal activities of an institution are concerned, State statutes clearly differentiate between financial stability and fiscal integrity. An institution may, in the short run at least, appear financially sound but may not handle its business affairs with integrity. Statutory requirements dictate the use of "generally accepted accounting principles"; the payment of operating expenses, including student tuition refunds, within 30 days; and compliance with State and federal laws governing the use of student financial funds.

Recruitment: Numerous parts of the statutes require that the representatives of institutions abstain from making any untrue or misleading representations about their institutions, and in Section 94316.2 (c) the State holds the institution responsible for any violation committed by its representative. An infraction may result in an automatic voiding of all student contracts involved, the imposition of substantial fines, or even removal of the institution's license to operate, thus resulting in closure of the institution.

In addition to the laws governing the accurate representation of the institution, agents and agencies are required to be bonded to provide indemnification for any person for any material loss suffered as the result of fraud or misrepresentation in the sale of any course of study (Education Code 94333).

Accreditation provisions for institutional integrity

While all accrediting associations are concerned with matters of institutional integrity, not all address this concern under this rubric. The North Central Association, for example, employs the term in connection with the quality and dependability of the institution's credentials (certificates, diplomas, degrees) and the responsibility of the governing body to protect their integrity (i.e., "the coherence between word and deed" as the Association defines the term).

As a rule, regional accrediting associations require their member degree-granting institutions to have a governing board and explicitly assign the ultimate authority for institutional integrity to that governing body. There is then within the institution an instrument for self-correction should the executive officer, administrators under this officer, the faculty or staff breach the rules of integrity or law. The "joint and several responsibility" that these members of the governing board share helps to forge a corporate sense of responsibility that the members individually might not share. Standard 8A of WASC's Accrediting Commission for Commu-

nity and Junior Colleges illustrates this responsibility of the governing board (1990, p. 37):

> **Standard 8A** The governing board is responsible for the quality and integrity of the institution. It selects a chief executive officer, approves the purposes of the institution, and responsibly manages available fiscal resources. It establishes broad institutional policies and delegates to the chief executive officer the responsibility to administer these policies. There is a clear differentiation between the policy-making function of the board and executive responsibilities. The board protects the institution from external pressures and provides stability and continuity to the institution.

This practice of the regional accrediting agencies is not followed by associations whose memberships are largely comprised of for-profit schools, such as the Accrediting Bureau of Health Education Schools, the Accrediting Council for Continuing Education and Training, the Association of Independent Colleges and Schools, the National Association of Trade and Technical Schools, and the National Home Study Council. None requires that its members have a governance structure. Many, if not most, for-profit schools are organized as unincorporated proprietorships and, as a result, have no oversight board. In a large proportion of cases, the owner and the chief executive officer are the same individual. In such cases, the ultimate responsibility for the integrity of the institution rests with the single individual -- the quality and character of whom no accrediting association addresses in its standards (Display 1).

This lack of standards regarding the ownership of an accredited institution stands in contrast to the standard in State licensing law. By omitting this standard, all accrediting associations with the exception of the WASC Commissions rely on State licensure to ensure the probity of the ownership of proprietary institutions. The associations require that their institutions comply with State law in this respect. California's statute states, in part:

> No application for ownership or transfer of ownership shall be approved for any applicant that has been previously found in any judicial or administrative proceeding to have violated this chapter, or if there exists any grounds for denial set forth in Section 480 of the Business and Professions Code (Education Code, Section 94330 (g).

The exception to this reliance upon State statute, of course, is the WASC Commissions. As a result of their exemption, a loophole exists which allows a would-be school owner who has been found in violation of the State's licensing laws to purchase an interest in a WASC-accredited proprietary institution.

Presently, only six for-profit institutions are among the 278 public and private colleges and universities accredited by WASC; however, the State's stricter, more costly licensing laws could create the motivation for more proprietary schools to "move up" to WASC accreditation and avoid the increased regulatory requirements. Because of the WASC exemption and the absence of a WASC standard addressing this policy area, the twin opportunities for operating free of State regulations and free of the State's scrutiny of past violations offer undesirable incentives for violators to seek ownership of WASC accredited for-profit institutions, and the State has no legal basis for preventing it.

Honesty in advertising and recruiting: How an institution represents itself to its publics has a strong bearing on its integrity. All but two of the accrediting associations -- the Council on Chiropractic Education and the Foundation for Interior Design Education Research -- have standards relating to the integrity of institutional advertising and recruiting. This area of institutional activity is prone to abuse by accredited proprietary institutions, and according to the associations' responses to the Commission's 1990 survey, most associations do not review advertising and recruitment materials more often than the three- to six-year schedule that their school visits require. This long period between visits leaves institutions generally unmonitored with respect to this important standard.

In this policy area, accrediting standards and procedures are generally less stringent than those of the the State. The State's licensing statute provides both a more consistent and shorter monitoring period for examining the promotional materials of institutions (the institution is required to submit them for review on an annual basis) and a stronger set of penalties for misrepresentation of the institution (student contracts are voided, substantial fines may

be imposed, and in severe cases, the institution's approval to operate could be withdrawn).

Consumer protection

The concept of the student as a "consumer of education" with legal rights associated with his or her role as a student gradually evolved during the post-World War II period. This analogy of the student as a buyer of a consumable product is built on the observation that a considerable amount of time and money is spent by the student obtaining an education and that the contract between the institution and the student has most of the elements of a business transaction.

While authorities disagree on which court case was initially most influential in this regard, both *Dixon v. Alabama* (1961), which established due process rights for students on campus, and *Goldberg v. Regents of the University of California* (1967), which legally affirmed students rights to personal freedoms within the university, broke the old "in locus parentis" mold and helped to form the legal precedent upon which new laws and court decisions from that time to the present were based.

California's postsecondary education statutes and regulations began to address student consumer protection needs in the mid-1970s in reflection of a decade-long discussion of the abuses of students' rights and the misuse of government funds in the proprietary-school sector (Stark, 1977, p. 3). The consumer protection efforts were part of a larger student rights quest that itself was closely associated with the civil rights movement, the free speech movement, and a maturing student population.

State standards for consumer protection

The consumer protection provisions of the State's Private Postsecondary and Vocational Education Reform Act growing out of this social milieu address such problems as:

1. False and misleading advertising (Education Code Section 94320(e)(g);
2. Lack of dependable information of the price of an education and required materials (Section 94316.10(a)(4);
3. Vague and ambiguous enrollment contracts (Section 94316.20);
4. Unfair refunds for unused tuition, equipment, and materials (Section 94319);
5. Lack of a mechanism for resolving student complaints (Section 94316.20); and
6. Lack of information (or accurate information) regarding outcomes of educational programs (Section 94316.10).

It is the business analogy of the student as consumer and the contract theory of law "that holds that there is a mutual agreement, a contract or quasi-contract, between the student and the school to which both parties must adhere" that give potency to the consumer protection sections of the State's statutes. In this regard, there is broad precedence in law for this aspect of the State's postsecondary institution licensing laws and this legal precedence provides a foundation for licensing actions by the Council for Private Postsecondary and Vocational Education that accrediting associations do not have.

Accreditation provisions for consumer protection

The information in Display 1 highlights three aspects of consumer protection: tuition refund policy, enrollment contracts, and student complaints. Both the State and accrediting associations have explicit policies affecting these matters. In each case, the State's policies found in statute are more rigorous.

Tuition refund policy: The tuition refund policies employed by the various accrediting associations are quite similar in many respects. The reason for this similarity is that all follow the guidelines developed by the National Association of College and University Business Officers (NACUBO) and promulgated by the American Council on Education in 1979. One of these guidelines, as quoted by the WASC Commission for Community and Junior Colleges, is reproduced in Display 2 on page 30.

While the accrediting associations' tuition refund policies are written to be "fair and equitable," as required by federal student financial regulations, they are in all cases less generous to students than are the State's new policies brought into law by SB 194 (Morgan, 1990) and AB 1402 (Waters, 1989).

DISPLAY 2 Guideline 8 of "Policy Guidelines for Refund of Student Charges"

GUIDELINE EIGHT. **The institutional tuition refund policy for an academic period should include the following minimum guidelines:**

1. The institution should refund 100 percent of the tuition charge, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.

2. The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period.

It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless state law imposes a more restrictive refund policy.

Source: National Association of College and University Business Officers, quoted by Accrediting Commission for Community and Junior Colleges, WASC, 1990, p.90.

The accrediting associations' policies and the State's requirements both cover the same elements of refund policy (nonrefundable application fee, contract cancellation period, and a sliding scale upon which tuition refunds are made after the cancellation period is past), and while there is some similarity among all the policies with respect to the first two elements, there is a significant difference between the associations' policies and the State's in the sliding scale. This results in large differences between the amount of refund paid to a withdrawing student, depending on which policy the institution is required to follow.

At one end of the range of these policies is that of NACUBO, which as illustrated in Display 2 recommends that at least 25 percent of the tuition (less the nonrefundable fee) be refunded if the student leaves during the first 25 percent of the attendance period, but recommends *no* refund after that point in the term. At the other end of the spectrum is California's policy that requires a strict pro rata refund throughout the period of attendance (Education Code, Section 94318.5). This results, for example, in a 70 percent refund if the student withdraws from school after 30 percent of the term is completed or 25 percent refund after 75 percent of the term is past. All accredited proprietary non-degree-granting institutions are required to meet this pro rata standard in California. A somewhat less stringent standard, requiring a pro rata scale only through the first 60 percent of the term and no refund thereafter, is required of all other State-licensed institutions (Education Code, Section 94312 (d).

A strict monitoring and enforcement of tuition refund policy is a necessary State agency activity, especially in the case of financially marginal institutions or institutions under leadership which is not conscientious about following State policy. In an area such as this, where the State's standard is stricter than that of the accrediting agencies, the State cannot rely on the associations to monitor and enforce State standards. Accreditation agencies have neither the authority nor inclination to do so.

Enrollment contracts: What has been said about the difference in the rigor of State and accrediting association refund policies is equally true for policy regarding student enrollment contracts. While the associations have standards or guidelines requiring "accurate," "clearly stated," "current" enrollment agreements or catalogs, the State has explicit, exhaustive requirements in Education Code, Sections 94312 (f) and 94319. In order for the State to ensure compliance with this strict policy, monitoring and enforcement by an agency of the State is required.

Student complaints: Multiple complaints from students about any aspect of an institution related to the State's licensing requirements comprise one of the most effective signals of a breakdown in the compliance of an institution. Ensuring that these complaints reach the appropriate authority, monitoring their resolution and investigating the condition of an institution when the volume of complaints suggest this is necessary are all vital functions of an effective regulatory agency.

Accrediting associations receive student complaints as well as complaints from other constituents and all have a policy for dealing with these complaints, a policy required by federal regulations governing the recognition of accrediting associations and agencies by the United States Secretary of Education. Four of the 16 associations surveyed by the Commission require that their member institutions inform their students of this "court of appeal" outside the institution. Only three of the four require that the institutions post this policy (Display 1).

Some students having complaints will find an agency with which they can file their grievance. The problem is that there is a multiplicity of agencies receiving these complaints and these agencies do not all have an adequate system for informing each other about the complaints they receive. These agencies have included the Student Aid Commission, the Private Postsecondary Education Division of the State Department of Education, the California Postsecondary Education Commission, the Attorney General, accrediting associations, the federal Inspector General, as well as local law enforcement authorities. Several of these law enforcement agencies have an informal policy of investigating an institution that is the source of complaints if they receive several similar complaints (usually five or more) during a short interval of time. Unless these complaints are all channeled to the appropriate agency, it is possible that a dozen or more students may contact these diverse agencies without triggering a needed response because the contacts are scattered among so many agencies.

The State now has a new policy to begin addressing this problem. In contrast to the practice of most accrediting associations, California's new statute requires institutions licensed by the Council for Private Postsecondary and Vocational Education to inform their students of their avenue of appeal to the Council if they "have any complaints, questions, or problems which you cannot work out with the school . . ." [Education Code, Section 94319 (a); similar language is also found in Section 94312 (f)]. Licensed institutions are now required to place this information in the student enrollment contract "in 12-point boldface print or larger."

One reason for the scattering of complaints in the past may be that all the institutions accredited by the 16 agencies reviewed in this study have been exempted from this statutory requirement. As a result of the new law, only WASC-accredited institutions will be exempted from this requirement.

In summary, the Commission's comparison of accrediting agencies' consumer protection policies with those of the State's shows that in all three areas -- tuition refund, enrollment contracts, and student complaints -- the State has more rigorous requirements. In these sectors of licensing standards, it would not be feasible to rely on accrediting agencies to monitor or enforce the State's requirements.

5 *The Feasibility of Collaboration*

Risks of collaboration

In Part One of this report, the Commission mentioned the opposition of some accrediting associations to having the State utilize accreditation in lieu of State licensure. In fact, both the State and the accrediting associations assume risks if a formal sharing of certain responsibilities is followed. The following examples that might arise in this type of relationship probably do not exhaust the potential problems:

- *Legal responsibilities of the two agencies are blurred in formal joint activities.*

Accrediting associations make certain claims regarding the quality and probity of their member institutions. If, as has happened recently, an association knowingly accredits an institution that falls far short of its standards, it may be subject to civil action for issuing untrue or misleading information. And, if the State has in any way participated in a joint review or relied on the accrediting agency's information for the purpose of renewing the institution's license, the State may be a party to the charge.

- *Accrediting agencies' policy of confidentiality inhibits a full exchange of information between the agencies and the State's Council.*

Only two accrediting agencies surveyed in the course of this study responded that they would share the visiting teams' reports with the State agency and one of these conditioned the report's release on having a State representative participate in the site visit (Display 1, pp. 20-23). This response was surprising in view of the fact that the Council has the authority under Education Code Section 94319.5 to request and receive any information concerning a California licensed institution that the accrediting agency maintains.

Privately, several representatives expressed the opinion that a policy of sharing such reports might be worth considering, but they adhered strictly to their policy of confidentiality in their official response to the Commission.

- *State agencies have a similar constraint in sharing confidential information with accrediting agencies.*

A representative of the California Attorney General's office expressed the belief that the Attorney General could not share information freely with the State's Council if that agency had a policy of free exchange of information with accrediting agencies. In the past, the Attorney General has had a problem with an accrediting agency disclosing to its member institution the existence of a confidential investigation against the institution. The sharing of information from the Attorney General might be viewed by some accrediting agencies as the reciprocal of their sharing visiting team reports with the Council. A protocol for sharing critical information among these and other agencies could improve immeasurably the enforcement of the licensing statutes.

- *Accrediting agencies cannot enforce standards that are more rigorous than or different from their own standards.*

In the preceding comparison of State and accreditation standards, the Commission found some important areas in which the State's standards were more rigorous than the accrediting agencies'. In such instances, the State could not rely on an accrediting agency to enforce a standard equivalent to the State's. The agency would have no right to do so and could not sustain its action if challenged in court.

In view of such problems, is there any basis upon which accrediting associations and the State's licensing agency can or should collaborate? The Commission believes so. According to the Commission's survey of accredited institutions, there are significant annualized costs to the accreditation

process which range from as little as $1.00 per student to as much as $75 per student per year. With the higher licensing fees that will be required to maintain an effective Council, it is possible that licensing costs may double these costs for some institutions and students. But more persuasive than the argument for efficiency, the Commission believes, is the argument for the increase in effectiveness that could be achieved for both accrediting agencies and the Council if greater collaboration could be achieved. A substantial increase in the usual level of cooperation between accrediting agencies and the Council would not easily be accomplished, but most institutions surveyed by the Commission strongly supported such a goal.

How should collaboration be developed? Reason supports an approach that would focus the energies of the Council in the sector of institutions where most compliance difficulties arise. Conversely, the Council should have to spend relatively less effort on institutions belonging to accrediting agencies whose members have relatively few compliance problems. In general, to facilitate its own work, the Council should seek to reward groups of accredited institutions which through their own self-regulation operate well above the minimum standards of the State. These mutually beneficial rewards could involve seeking to relieve the institutions of duplicative reporting requirements wherever possible (by accepting reporting formats and schedules adopted by the accrediting agency), making every reasonable effort to extend to these institutions the maximum term of licensure possible.

Despite the difficulties of sharing some types of information among the various licensing, enforcement, and accrediting agencies, there are other types of information that can and should be exchanged in an efficient manner. These include student complaints, official actions; requests for, as well as action taken on, substantive changes; changes of ownership; and similar information. Some actions must originate with the Council and then should be communicated to the accrediting agency, but the responsibilities of the two types of agencies, the licensing and the accrediting, that information gained from monitoring the institutions under the purview of both organizations will routinely turn up information of interest and use to both. The Council should have a well-developed protocol for pursuing beneficial interagency communications with individual accrediting agencies.

Options for the Council's consideration

In general, there are two basic models that the Council might use, depending on the strength of accreditation standards and the rigor of their application by the accrediting body. Neither model is intended to be superior to the other; they simply take into account the various strengths of the individual accrediting bodies and the relative level of their ability to cooperate with the Council. The models differ in the amount of independent activity the Council would undertake; neither of them assumes that the Council or the State of California at large should rely on accrediting standards or procedures "in lieu of licensure."

Option One: The collaborative model

This model presents the two functions of licensing and accreditation as complementary and collaborating activities.

Periodic reviews: The Council would conduct its periodic "reapproval" site visits and maintain its own annual reporting process and schedule without regard to the accrediting body's requirements or schedule. The Council and accrediting body would seek agreement on common formats for such reports as the annual report including the annual financial report, student complaint (including a procedure for informing each other -- Council and accrediting body -- of complaints received and their disposition).

Information exchange: The Council and accrediting body would develop a specific "memo of understanding" delineating the extent of and procedures for sharing information on complaints received, institutional weaknesses observed (such as financial ill health, institutional warnings, or probation given) and substantive change proposals received. Council reports on site visits and accreditation team reports would be shared. Reporting functions on which the Council and accrediting body could not agree would be carried out independently.

Strengths of this model: As with Option One, the

Council would be free to set its own schedule and priorities for site visits. The common reporting formats and schedules would help to reduce redundant paperwork for accredited institutions and still provide the necessary information each agency requires. The fuller exchange of information would help to provide an earlier alert to both agencies than if they were operating without sharing information.

Weaknesses of this model: Collaboration on the content, form, and schedule of required reports would cost the Council staff time and money. It would be of limited value to the Council to engage in such collaboration with accrediting bodies that have few institutions in California.

Option Two: The noncollaborative model

This model presents the two functions of licensing and accreditation as wholly independent activities.

Periodic reviews: The Council would conduct its periodic "reapproval" site visits and maintain its own annual reporting process and schedule without regard to the accrediting body's requirements or schedule.

Information exchange: The Council would inform accredited institutions regarding student complaints the Council receives, would inform the accrediting body of the complaint, but would not solicit a response from the accrediting body. The Council would notify the accrediting body of the removal of the license from one of its accredited institutions.

Strengths of this model: The Council would be relatively unfettered in setting its own schedules and priorities for site visits and annual reports. The collection of information and the form in which the Council collected it would not be impeded by an accrediting body's requirements of form and content or the need to negotiate a shared form or content of information. The responsibility for collecting the right information in a timely fashion would be clearly placed with the Council.

Weaknesses of this model: A wholly independent role in the oversight of accredited institutions would tend to limit the kind and amount of information available to the Council.

Choices facing the Council

The Council may choose to employ either of these options (or some variation of either) with any of the agencies that accredit California institutions depending on its determination in each case of the advantages for implementing State statutes, but under these statutes it cannot delegate its oversight responsibilities to those agencies. The Private Postsecondary and Vocational Education Reform Act states in Section 94311.4, "The council may utilize the resources of accrediting associations in gathering information about accredited postsecondary and vocational institutions, including participating as an observer on accreditation site visits. However, this does not preclude or relieve the council of its responsibilities under the provisions of this chapter and the council shall retain full authority for approving all private postsecondary and vocational institutions operating in California."

To the extent that the Council's use of information from accrediting agencies implies that the Council might use institutional accreditation "in lieu of part or all of the State licensing review," as AB 1993 suggested, this delegation of authority is precluded by Section 94311.4. The Commission's findings from this study suggest that such delegation would be inadvisable even if it were not illegal.

6 *Conclusions and Recommendations*

Conclusions

In AB 1993, the Legislature directed the Commission to answer four specific questions in its review of accrediting associations. In the following paragraphs, the Commission answers them.

1. *Do the standards and procedures of accrediting agencies encompass the standards and consumer protection requirements of California law?*

The Commission concludes that none of the 16 regional and national accrediting associations examined in its study has standards and consumer protection requirements that encompass in their entirety the standards and consumer protection requirements of California law. The categories of standards that the Commission reviewed in detail include those governing institutional stability, institutional integrity, and consumer protection. The Commission finds that, in these areas, the standards created in recent legislation are not only more explicit and objective in their language than accreditation standards, they are, in most instances, also more rigorous in their requirements.

2. *Are those standards rigorously enforced?*

AB 1993 probably raised this question in the expectation that the answer to the first question would be in the affirmative; but it was not. The Commission concludes, therefore, that, for the purposes of this study, this issue is moot, since even the most rigorous enforcement of an accreditation standard cannot be more stringent than the standard itself.

This conclusion is not all that can be said about this question, however. The information provided in Display 1 on pages 20-23 under the categories "Complaint Rates" and "Other Characteristics" suggests additional relevant conclusions. First, some accrediting associations appear to be maintaining a satisfactory record despite the fact that their standards in the three areas reviewed are not as rigorous as the new licensing standards. This record includes (1) very few complaints received; (2) low average student loan default rate (under 20 percent); (3) no pending cases before the State Attorney General; and (4) no adverse actions brought by the California Student Aid Commission. In this group are the following:

Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges

American Association of Bible Colleges

American Osteopathic Association

Association of Theological Schools in the United States and Canada

Council on Chiropractic Education

Foundation for Interior Design Education Research

North Central Association of Colleges and Schools

Northwest Association of Schools and Colleges

Southern Association of Colleges and Schools

The Accrediting Commission for Community and Junior Colleges (ACCJC) of the Western Association of Schools and Colleges deserves special consideration at this point. ACCJC-accredited institutions have a high weighted average default rate because of the extremely high default rates among public community colleges -- some running as high as 60 to 70 percent. If only the private two-year schools accredited by the ACCJC were considered, the default rate would drop to the low 20s. While the Commission is concerned in this study with the quality of accrediting associations' oversight of private institutions in California, it believes that the ACCJC should address this issue directly and forcefully with respect to all institutions, public and private, under its purview. ACCJC has brought this issue to the attention of its evaluation teams since 1989, and in the Fall 1990 issue of the ACCJC's Newsletter,

the agency's Executive Director again drew attention to the need for the institutions in their self-study and the evaluation teams during their site visits to examine the institution's default experience.

In contrast to the agencies scoring high on the four criteria listed on page 37, the Commission finds that at least six agencies score low on them. The Commission believes that these low scores serve as warning signals regarding the quality of institutional oversight provided by these agencies. Not only have their accredited institutions generated considerably more complaints than other accredited institutions, these agencies have had serious problems in the other criterion areas as well. These six are:

Accrediting Bureau of Health Education Schools

Accrediting Council for Continuing Education and Training

Association of Independent Colleges and Schools

National Accrediting Commission of Cosmetology Arts and Sciences

National Association of Trade and Technical Schools

National Home Study Council

3. *What deficiencies in standards, procedures, or enforcement exist?*

As noted in the Commission's answer to the first question, the Commission finds the accrediting associations' standards to be deficient in terms of institutional stability, institutional integrity, and consumer protection. In addition, the Commission finds that some accrediting association procedures are not as rigorous as the requirements of the State's licensing laws. These include a longer time between accreditation site visits than the State's period between licensing reviews; lack of annual review of advertising materials; lack of review of any new owner's background; and lack of a firm requirement that all new branches be visited before being approved by some accrediting agencies. In addition, there is evidence from investigations by both the Attorney General's staff and staff of the California Student Aid Commission, that some verification visits by agencies have been too superficial to uncover the abuses that these staffs later discovered (Display 1). These agencies include:

Accrediting Bureau of Health Education Schools

Accrediting Council for Continuing Education and Training

Association of Independent Colleges and Schools

National Accrediting Commission of Cosmetology Arts and Sciences

National Association of Trade and Technical Schools

National Home Study Council

4. *How effectively do the accrediting agencies respond to consumer complaints, including complaints forwarded by State agencies?*

The Commission examined the written procedures followed by each accrediting agency but was unable to determine to any degree of satisfaction the effectiveness of the procedures employed. It is significant, the Commission believes, that none of the associations promotes as a requirement California's licensing demand that they inform enrolling students of their opportunity to forward problems or complaints to the accrediting agency or the Council for Private Postsecondary and Vocational Education.

Two additional pertinent observations may also suggest a less than satisfactory level of effectiveness on the part of the accrediting associations.

- First, in nearly all cases where complaints against institutions were received, more complaints were forwarded to the State licensing agency during the first half of 1989 than were received by the accrediting association for all of that year. Although students direct their complaints about private institutions to a number of agencies, the Council for Private Postsecondary and Vocational Education should be organized to solicit and address all types of consumer complaints regarding private institutions and to process them in a way that will also contribute to its oversight responsibilities.
- Second, accrediting agencies are quite clear about the fact that they accept the responsibility

for following up only those complaints that signal a breach of their own standards. The most that could be appropriately expected of an accrediting association should a student complain to it about an institution's noncompliance with a State licensing law is that the association would refer the student to the Council for Private Postsecondary and Vocational Education.

In summary, accrediting agencies follow up complaints that affect their accreditation standards and refer other complaints to the State agency for its resolution. Accreditation associations have resisted any suggestion that they should do more than that, e.g., attempt to resolve complaints regarding a breach of State standards. This activity would tend to move beyond their role and authority.

Summary of conclusions

The question that has driven this policy study is whether, despite recognized differences between the authority and objectives of accrediting agencies, the State can rely on their labor, standards, and procedures to fill the public need that State licensure is designed to fill.

To help answer this question, the Commission has pointed to the stimulus that the for-profit sector of postsecondary education has provided in the growth of the State's regulatory statutes, discussed the intent of the Legislature in establishing the new law, examined some of the major differences between nongovernmental accreditation and State licensure, and cited the State's diminishing reliance on accreditation as an insurance of standards of quality in postsecondary education.

Finally, the Commission looked specifically at three policy areas -- institutional stability, institutional integrity, and consumer protection -- to see what level of protection the State's licensing statutes provide, in order to determine whether accrediting agencies' standards and procedures encompass (at least in these three important areas) "the standards and consumer protection requirements prescribed in . . . the Private Postsecondary and Vocational Education Reform Act."

The Commission has concluded that the standards and procedures of the accrediting associations generally fall short of encompassing the specifics of the State's standards in comparison to California's new law regulating private postsecondary education in the State. It thus endorses the law's requirement that the Council for Private Postsecondary and Vocational Education not delegate its regulatory powers to them.

Recommended State policy

The Commission's review of State licensure and nongovernmental accreditation has reinforced its earlier observation that while similarities exist here and there between the State's new licensing policies and those of the various accrediting bodies, the two functions of licensing and accreditation are fundamentally different. Licensure conveys the right to offer certain educational services; nongovernmental accreditation connotes a certain level of quality and participation in a peer review process purporting to raise the level of institutional quality. When the State or federal government employs accreditation as a "reliable authority as to the quality of training" offered by an institution, as the federal government does for purposes of determining institution eligibility for participation in federal funding programs, a question arises as to whether accrediting agencies are serving in a quasi-governmental capacity in providing this function. The issue is even more salient when an accrediting agency serves "in lieu of state licensure" as an instrument for maintaining institutional standards. The Commission's study of this issue indicates that few decision makers in accreditation or in state licensure believe that this latter use of accreditation is good public policy.

In AB 1993, the Commission was directed to advise "whether it recommended that a regional or national agency's accreditation of a postsecondary educational institution should be utilized in lieu of part or all of the state licensure review" (Section 66914 (c)).

The Commission recommends that the Legislature retain the following policy that it adopted in Senate Bill 190 (Morgan, 1989):

> **The State through the Council for Private Postsecondary and Vocational Education shall maintain full responsibility for licensing and monitoring the compliance with**

state standards for all private postsecondary educational institutions covered under the Private Postsecondary and Vocational Act of 1989. The Council shall not utilize an institution's national or regional accreditation or accreditation process in lieu of part or all of the State's licensure or licensure process.

The Commission's 1989 report on this subject contained a guideline for governing the working relationships between the Council and various national and regional accrediting agencies. This guideline stated, in part, that "the State should rely upon individual accrediting agencies . . . only when an accrediting agency can demonstrate that its standards and procedures substantially cover the standards and consumer protection requirements in the State's licensing laws . . ." (p. 4). In the context of that report, this guideline could have been understood to support the discretionary acceptance of accreditation "in lieu of state licensure." In truth, the extent or nature of the recommended reliance was not extensively discussed.

Since the Commission articulated this guideline, the Legislature has taken two important steps that affect the regulatory environment and thus change application of this guideline: (1) it has created a new licensing board with significant new powers, and (2) it has placed under that board all accredited institutions covered by the new licensing law. These statutory changes and the findings in the present Commission study strongly suggest that any reliance upon accrediting agencies be limited to a vigorous effort to develop effective and expeditious lines of communication, including an effort on the part of the Council to elicit the cooperation of the accrediting agencies in voluntarily sharing their visiting team reports in a timely manner.

In urging the fullest cooperation in sharing substantial useful information between the Council and selected accrediting agencies, the Commission recommends that the Council establish a formal protocol for sharing information with those accrediting agencies that have been identified as maintaining a satisfactory record with respect to performance criteria developed and applied by the Commission.

In consultation with the Council, the Commission intends to complete its responsibilities under AB 1993 by conducting more intensive reviews of the accrediting agencies that accredit institutions licensed under the State's licensing law. In the process of carrying out this task, it will review and revise its criteria as needed.

Finally, one of the most critical missing elements in this study has been the absence of any measure of the adequacy of the Council's implementation of State standards. As mentioned earlier in this report, rigorous licensing standards and the full authority to administer those standards are not sufficient measures of the effectiveness of the new law. Part of the Commission's ongoing review of the effectiveness of accrediting agencies must be a comparison of the relative successfulness of the Council. Thus the Commission will energetically monitor the Council's performance and report to the Legislature the Council's relative success in carrying out its responsibilities.

Appendix A Assembly Bill 1993 (1989)

Assembly Bill No. 1993

CHAPTER 1324

An act to amend, repeal, and add Section 66901 of, and to add Article 2.5 (commencing with Section 66914) to Chapter 11 of Part 40 of, the Education Code, relating to private postsecondary educational institutions.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 2, 1989.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1993, Farr. Private postsecondary educational institutions.

Existing law provides for the establishment of the California Postsecondary Education Commission, comprised of representatives appointed in a prescribed manner, including, among others, the chair or the designee of the chair of the Council for Private Postsecondary Educational Institutions.

This bill would repeal and recast these provisions to require, commencing July 1, 1990, that the California Postsecondary Education Commission include the chair or the designee of the chair of the Council for Private Postsecondary and Vocational Education, instead of the chair of the Council for Private Postsecondary Educational Institutions.

Existing law prescribes the duties and responsibilities of the commission relative to its capacity as the statewide postsecondary education planning and coordinating agency and adviser to the Legislature and the Governor.

This bill would require the commission, with the assistance of the Superintendent of Public Instruction, to conduct an initial review of all national and regional accrediting agencies which accredit private postsecondary institutions doing business or seeking to do business in the state to report the results of that review to the Council for Private Postsecondary and Vocational Education and the Legislature by December 31, 1990. The bill would require the review to include (1) a determination of whether these accrediting agencies can demonstrate that their standards and procedures for the review of these institutions encompass prescribed state standards and consumer protection requirements and that they are rigorously enforced and (2) the effectiveness of the accrediting agency in responding to consumer complaints. The bill would require the commission, following this initial review, to review these accrediting agencies every 5 years, or sooner upon the request of the council, as prescribed, and would require the commission to report the findings of these periodic reviews to the council and to the Legislature.

This bill would also require the commission, with the assistance of the Superintendent of Public Instruction, to work in cooperation

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with the Council for Private Postsecondary and Vocational Education to prepare a preliminary draft of proposed regulations to implement the standards, procedures, and criteria prescribed in specified provisions governing private postsecondary educational institutions.

This bill would specify that these provisions shall become operative only if SB 190 of the 1989–90 Regular Session is chaptered and becomes effective on or before January 1, 1990.

The people of the State of California do enact as follows:

SECTION 1. Section 66901 of the Education Code is amended to read:

66901. There is hereby created the California Postsecondary Education Commission, which shall be advisory to the Governor, the Legislature, other appropriate governmental officials, and institutions of postsecondary education. The commission shall be composed of the following members:

(a) One representative of the Regents of the University of California designated by the regents, one representative of the Trustees of the California State University designated by the trustees, and one representative of the Board of Governors of the California Community Colleges designated by the board. Representatives of the regents, the trustees, and the board of governors shall be chosen from among the appointed members of their respective boards, but in no instance shall an ex officio member of a governing board serve on the commission.

(b) One representative of the independent California colleges and universities which are accredited by a national or regional association which is recognized by the United States Department of Education. This member shall be appointed by the Governor from a list or lists submitted by an association or associations of those institutions.

(c) The chair or the designee of the chair of the Council for Private Postsecondary Educational Institutions.

(d) The President of the State Board of Education or his or her designee from among the other members of the board.

(e) Nine representatives of the general public appointed as follows: three by the Governor, three by the Senate Rules Committee, and three by the Speaker of the Assembly. It is the intent of the Legislature that the commission be broadly and equitably representative of the general public in the appointment of its public members and that the appointing authorities, therefore, shall confer to assure that their combined appointments include adequate representation on the basis of sex and on the basis of the significant racial, ethnic, and economic groups in the state.

No person who is employed by any institution of public or private postsecondary education shall be appointed to or serve on the

commission, except that a person who is not a permanent, full-time employee and who has part-time teaching duties which do not exceed six hours per week may be appointed to and serve on the commission.

The commission members designated in subdivisions (a), (c), and (d) shall serve at the pleasure of their respective appointing authorities. The member designated in subdivision (b) shall serve a three-year term. The members designated in subdivision (e) shall each serve a six-year term. The respective appointing authority may appoint an alternate for each member who may, during the member's absence, serve on the commission and vote on matters before the commission. When vacancies occur prior to expiration of terms, the respective appointing authority may appoint a member for the remainder of the term.

Any person appointed pursuant to this section may be reappointed to serve additional terms.

Any person appointed pursuant to this section who no longer has the position which made him or her eligible for appointment may nonetheless complete his or her term of office on the commission.

No person appointed pursuant to this section shall, with respect to any matter before the commission, vote for or on behalf of, or in any way exercise the vote of, any other member of the commission.

The commission shall meet as often as it deems necessary to carry out its duties and responsibilities.

Any member of the commission who in any calendar year misses more than one-third of the meetings of the full commission forfeits his or her office, thereby creating a vacancy.

The commission shall select a chair from among the members representing the general public. The chair shall hold office for a term of one year and may be selected to successive terms.

There is established an advisory committee to the commission and the director, consisting of the chief executive officers of each of the public segments, or their designees, the Superintendent of Public Instruction or his or her designee, and an executive officer from each of the groups of institutions designated in subdivisions (b) and (c) to be designated by the respective commission representative from these groups. Commission meeting agenda items and associated documents shall be provided to the committee in a timely manner for its consideration and comments.

The commission may appoint any subcommittees or advisory committees it deems necessary to advise the commission on matters of educational policy. The advisory committees may consist of commission members or nonmembers, or both, including students, faculty members, segmental representatives, governmental representatives, and representatives of the public.

The commission shall appoint and may remove a director in the manner hereinafter specified. The director shall appoint persons to any staff positions the commission may authorize.

The commission shall prescribe rules for the transaction of its own affairs, subject, however, to all the following requirements and limitations:

(1) The votes of all representatives shall be recorded.

(2) Effective action shall require the affirmative vote of a majority of all the duly appointed members of the commission, not including vacant commission seats.

(3) The affirmative votes of two-thirds of all the duly appointed members of the commission, not including vacant commission seats, shall be necessary to the appointment of the director.

(f) This section shall remain in effect until June 30, 1990, and as of that date is repealed.

SEC. 2. Section 66901 is added to the Education Code, to read:

66901. There is hereby created the California Postsecondary Education Commission, which shall be advisory to the Governor, the Legislature, other appropriate governmental officials, and institutions of postsecondary education. The commission shall be composed of the following members:

(a) One representative of the Regents of the University of California designated by the regents, one representative of the Trustees of the California State University designated by the trustees, and one representative of the Board of Governors of the California Community Colleges designated by the board. Representatives of the regents, the trustees, and the board of governors shall be chosen from among the appointed members of their respective boards, but in no instance shall an ex officio member of a governing board serve on the commission.

(b) One representative of the independent California colleges and universities which are accredited by a national or regional association which is recognized by the United States Department of Education. This member shall be appointed by the Governor from a list or lists submitted by an association or associations of those institutions.

(c) The chair or the designee of the chair of the Council for Private Postsecondary and Vocational Education.

(d) The President of the State Board of Education or his or her designee from among the other members of the board.

(e) Nine representatives of the general public appointed as follows: three by the Governor, three by the Senate Rules Committee, and three by the Speaker of the Assembly. It is the intent of the Legislature that the commission be broadly and equitably representative of the general public in the appointment of its public members and that the appointing authorities, therefore, shall confer to assure that their combined appointments include adequate representation on the basis of sex and on the basis of the significant racial, ethnic, and economic groups in the state.

No person who is employed by any institution of public or private postsecondary education shall be appointed to or serve on the

commission, except that a person who is not a permanent, full-time employee and who has part-time teaching duties which do not exceed six hours per week may be appointed to and serve on the commission.

The commission members designated in subdivisions (a), (c), and (d) shall serve at the pleasure of their respective appointing authorities. The member designated in subdivision (b) shall serve a three-year term. The members designated in subdivision (e) shall each serve a six-year term. The respective appointing authority may appoint an alternate for each member who may, during the member's absence, serve on the commission and vote on matters before the commission. When vacancies occur prior to expiration of terms, the respective appointing authority may appoint a member for the remainder of the term.

Any person appointed pursuant to this section may be reappointed to serve additional terms.

Any person appointed pursuant to this section who no longer has the position which made him or her eligible for appointment may nonetheless complete his or her term of office on the commission.

No person appointed pursuant to this section shall, with respect to any matter before the commission, vote for or on behalf of, or in any way exercise the vote of, any other member of the commission.

The commission shall meet as often as it deems necessary to carry out its duties and responsibilities.

Any member of the commission who in any calendar year misses more than one-third of the meetings of the full commission forfeits his or her office, thereby creating a vacancy.

The commission shall select a chair from among the members representing the general public. The chair shall hold office for a term of one year and may be selected to successive terms.

There is established an advisory committee to the commission and the director, consisting of the chief executive officers of each of the public segments, or their designees, the Superintendent of Public Instruction or his or her designee, and an executive officer from each of the groups of institutions designated in subdivisions (b) and (c) to be designated by the respective commission representative from these groups. Commission meeting agenda items and associated documents shall be provided to the committee in a timely manner for its consideration and comments.

The commission may appoint any subcommittees or advisory committees it deems necessary to advise the commission on matters of educational policy. The advisory committees may consist of commission members or nonmembers, or both, including students, faculty members, segmental representatives, governmental representatives, and representatives of the public.

The commission shall appoint and may remove a director in the manner hereinafter specified. The director shall appoint persons to any staff positions the commission may authorize.

The commission shall prescribe rules for the transaction of its own affairs, subject, however, to all the following requirements and limitations:

(1) The votes of all representatives shall be recorded.

(2) Effective action shall require the affirmative vote of a majority of all the duly appointed members of the commission, not including vacant commission seats.

(3) The affirmative votes of two-thirds of all the duly appointed members of the commission, not including vacant commission seats, shall be necessary to the appointment of the director.

(f) This section shall become operative on July 1, 1990.

SEC. 3. Article 2.5 (commencing with Section 66914) is added to Chapter 11 of Part 40 of the Education Code, to read:

Article 2.5. Review of National and Regional Postsecondary Accrediting Agencies

66914. (a) The commission, with the assistance of the Superintendent of Public Instruction, shall conduct an initial review of all national and regional accrediting agencies which accredit private postsecondary institutions doing business or seeking to do business in the state and shall report the results of the review to the Council for Private Postsecondary and Vocational Education and to the Legislature by December 31, 1990. This review shall determine all of the following:

(1) Whether the accrediting agency can demonstrate that its standards and procedures for the review of institutions encompass the standards and consumer protection requirements prescribed in Chapter 3 (commencing with Section 94300) of Part 59, as added by the Private Postsecondary and Vocational Education Reform Act of 1989, and that those standards are rigorously enforced. In the event that the commission determines that the accrediting agency is deficient in its standards, procedures for review, or the enforcement mechanisms for the institutions under the accrediting agency's jurisdiction, the commission shall identify the deficiencies.

(2) The effectiveness of the accrediting agency in responding to consumer complaints, including those complaints forwarded to the accrediting agency by the council.

(b) Following the initial review of all national and regional accrediting agencies the commission shall periodically review these agencies every five years, or sooner upon the request of the Council for Private Postsecondary and Vocational Education. The commission may stagger the review procedure in a manner which allows one-fifth of the national and regional accrediting agencies to be reviewed each year. The commission shall report the findings of these periodic reviews to the council and the Legislature.

(c) The commission shall advise the Legislature and the Council for Private Postsecondary and Vocational Education whether it

recommends that a regional or national accrediting agency's accreditation of a postsecondary educational institution should be utilized in lieu of part or all of the state licensing review by the council.

66915. (a) The commission, with the assistance of the Superintendent of Public Instruction, shall work in cooperation with the Council for Private Postsecondary and Vocational Education to prepare a preliminary draft of proposed regulations to implement the standards, procedures, and criteria prescribed in Chapter 3 (commencing with Section 94300) of Part 59, including all of the following:

(1) Policies for the administration of the Private Postsecondary and Vocational Education Reform Act of 1989.

(2) A procedure for the development and adoption of rules regulations, and procedures which are necessary or appropriate to conduct the work of the council.

(3) Minimum criteria for the approval of private postsecondary or vocational educational institutions to operate in the state and to award degrees and diplomas.

(4) A procedure for the approval of institutions which meet the prescribed criteria.

(b) The preliminary draft shall be delivered to the council on or before December 31, 1990.

SEC. 4. Sections 1 to 3, inclusive, of this act shall become operative only if Senate Bill 190 of the 1989–90 Regular Session is chaptered and becomes effective on or before January 1, 1990.

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Appendix B Methodology of the Study

In order to answer the four questions posed by the Legislature in AB 1993, the Commission gathered and analyzed information about accrediting agencies on three levels: (1) their written policies, (2) their actual practices, and (3) the effects of these policies and practices on institutions in California. The study was divided into two major phases -- data collection, and data analysis.

Data collection

The Commission sought data from 22 institutional accrediting agencies that evaluate California institutions, from 100 of their accredited institutions in the State, and from State agencies such as the California Student Aid Commission and the Private Postsecondary Education Division of the State Department of Education.

Accrediting agencies: The Commission requested a complete file of accreditation materials including accreditation policies, standards, and procedures from each agency. In addition, staff sent a questionnaire to each agency, seeking information on various practices, whether or not they are codified into written agency policy, and inquiring how the agency currently works with licensing agencies in other states and what might be the possibilities and constraints of its cooperating with California's Council.

Accredited institutions: From the entire list of California institutions accredited by each accrediting agency, the Commission surveyed a small sample by mail in order to compare the agencies' written policies with their practices and to solicit ideas from these institutions on how accreditation and State licensure might be mutually supportive.

California State agencies: The Commission obtained information from the California Student Aid Commission on the aggregate default rate of institutions accredited by each agency and on the number of limitation, suspension, and termination actions taken against them. From the Private Postsecondary Education Division of the State Department of Education, the Commission obtained information on the number of student complaints received against institutions under each accrediting agency and the number of school closures by agency.

Data analysis

The objective of the analytic phase of the project was to compare the policies, standards and procedures of each accrediting association with those required for State licensure under SB 190 and AB 1402.

The Commission identified three areas of particular importance to the State for this comparison:

1. *Institutional stability*, including financial stability and orderly expansion or contraction;
2. *Institutional integrity*, including the qualifications of the institution's owners or agents, the honesty of its advertising, the integrity of its recruitment efforts, and low default rates on Guaranteed Student Loans; and
3. *Consumer protection*, including an adequate refund policy, clarity of contract requirements, and responsiveness to student complaints.

As measures of association deficiencies, the Commission used (1) the default rates of accredited institutions on Guaranteed Student Loans; (2) the number of cases filed against accredited institutions by California's Attorney General; (3) the number of limitation, suspension, or termination actions filed against these institutions by the California Student Aid Commission; and (4) the number of student complaints filed with the Private Postsecondary Education Division of the California State Department of Education.

Use of the technical advisory committee

In conducting the study, the Commission invited representatives of 26 agencies and organizations, including all those accrediting agencies which serve as the sole institutional accrediting agency for one or more institutions in California, to participate as members of a technical advisory committee. The names of those individuals who attended are indicated in bold:

Accrediting agency officials

William Baumgaertner, Associate Director of Accreditation
Association of Theological Schools in the United States and Canada
Vandalia, Ohio

Randall E. Bell, Executive Director
American Association of Bible Colleges
Fayetteville, Arkansas

Richard J. Bradley, Executive Director
New England Association of Schools and Colleges., Inc.
Winchester, Massachusetts

Carol Cataldo, Executive Director
National Accrediting Commission of Cosmetology Arts and Sciences
Washington, D.C.

Kayem Dunn, Executive Director
Foundation for Interior Design Education Research
Grand Rapids, Michigan

Dorothy Fenwick, Executive Secretary
Accrediting Commission
National Association of Trade and Technical Schools
Washington, D.C.

William A. Fowler, Executive Secretary
National Home Study Council
Washington, D.C.

Jeanne Glankler, Administrator
Accrediting Bureau of Health Education Schools
Elkhart, Indiana

Joseph Malek, Executive Director
Northwest Association of Schools and Colleges
Seattle, Washington

Ralph G. Miller, Executive Vice President
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Ronald A. Reiter, Deputy Attorney General
Office of the Attorney General

Members of the advisory committee met twice with staff of the Commission to discuss the study and its results. The Commission is grateful to them for their assistance in that process, and this report has benefited from their suggestions and criticisms, even though it represents the views of the Commission alone rather than those of the committee.

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CALIFORNIA POSTSECONDARY EDUCATION COMMISSION

THE California Postsecondary Education Commission is a citizen board established in 1974 by the Legislature and Governor to coordinate the efforts of California's colleges and universities and to provide independent, non-partisan policy analysis and recommendations to the Governor and Legislature.

Members of the Commission

The Commission consists of 15 members. Nine represent the general public, with three each appointed for six-year terms by the Governor, the Senate Rules Committee, and the Speaker of the Assembly. The other six represent the major segments of postsecondary education in California.

As of March 1991, the Commissioners representing the general public were:

Lowell J. Paige, El Macero; *Chair;*
Henry Der, San Francisco; *Vice Chair;*
Mim Andelson, Los Angeles;
C. Thomas Dean, Long Beach;
Rosalind K. Goddard, Los Angeles;
Helen Z. Hansen, Long Beach;
Mari-Luci Jaramillo, Emeryville;
Dale F. Shimasaki, San Francisco
Stephen P. Teale, M.D., Modesto.

Representatives of the segments were:

Joseph D. Carrabino, Orange; appointed by the California State Board of Education;

James B. Jamieson, San Luis Obispo; appointed by the Governor from nominees proposed by California's independent colleges and universities

Meredith J. Khachigian, San Clemente; appointed by the Regents of the University of California;

John F. Parkhurst, Folsom; appointed by the Board of Governors of the California Community Colleges;

Theodore J. Saenger, San Francisco; appointed by the Trustees of the California State University; and

Harry Wugalter, Thousand Oaks; appointed by the Council for Private Postsecondary and Vocational Education.

Functions of the Commission

The Commission is charged by the Legislature and Governor to "assure the effective utilization of public postsecondary education resources, thereby eliminating waste and unnecessary duplication, and to promote diversity, innovation, and responsiveness to student and societal needs."

To this end, the Commission conducts independent reviews of matters affecting the 2,600 institutions of postsecondary education in California, including community colleges, four-year colleges, universities, and professional and occupational schools.

As an advisory planning and coordinating body, the Commission does not administer or govern any institutions, nor does it approve, authorize, or accredit any of them. Instead, it cooperates with other State agencies and non-governmental groups that perform these functions, while operating as an independent board with its own staff and its own specific duties of evaluation, coordination, and planning.

Operation of the Commission

The Commission holds regular meetings throughout the year at which it debates and takes action on staff studies and takes positions on proposed legislation affecting education beyond the high school in California. By law, its meetings are open to the public. Requests to speak at a meeting may be made by writing the Commission in advance or by submitting a request before the start of the meeting.

The Commission's day-to-day work is carried out by its staff in Sacramento, under the guidance of its executive director, Kenneth B. O'Brien, who is appointed by the Commission.

The Commission publishes and distributes without charge some 30 to 40 reports each year on major issues confronting California postsecondary education. Recent reports are listed on the back cover.

Further information about the Commission, its meetings, its staff, and its publications may be obtained from the Commission offices at 1020 Twelfth Street, Third Floor, Sacramento, CA 98514-3985; telephone (916) 445-7933.

THE STATE'S RELIANCE ON NON-GOVERNMENTAL ACCREDITATION, PART TWO

California Postsecondary Education Commission Report 91-6

ONE of a series of reports published by the Commission as part of its planning and coordinating responsibilities. Additional copies may be obtained without charge from the Publications Office, California Postsecondary Education Commission, Third Floor, 1020 Twelfth Street, Sacramento, California 95814-3985.

Recent reports of the Commission include:

90-22 Second Progress Report on the Effectiveness of Intersegmental Student Preparation Programs: The Second of Three Reports to the Legislature in Response to Item 6420-0011-001 of the 1988-89 Budget Act (October 1990)

90-23 Student Profiles, 1990: The First in a Series of Annual Factbooks About Student Participation in California Higher Education (October 1990)

90-24 Fiscal Profiles, 1990: The First in a Series of Factbooks About the Financing of California Higher Education (October 1990)

90-25 Public Testimony Regarding Preliminary Draft Regulations to Implement the Private Postsecondary and Vocational Education Reform Act of 1989: A Report in Response to Assembly Bill 1993 (Chapter 1324, Statutes of 1989) (October 1990)

90-26 Legislation Affecting Higher Education During the Second Year of the 1989-90 Session: A Staff Report of the California Postsecondary Education Commission (October 1990)

90-27 Legislative Priorities of the Commission, 1991: A Report of the California Postsecondary Education Commission (December 1990)

90-28 State Budget Priorities of the Commission, 1991: A Report of the California Postsecondary Education Commission (December 1990)

90-29 Shortening Time to the Doctoral Degree: A Report to the Legislature and the University of California in Response to Senate Concurrent Resolution 66 (Resolution Chapter 174, Statutes of 1989) (December 1990)

90-30 Transfer and Articulation in the 1990s: California in the Larger Picture (December 1990)

90-31 Preliminary Draft Regulations for Chapter 3 of Part 59 of the Education Code, Prepared by the California Postsecondary Education Commission for Consideration by the Council for Private Postsecondary and Vocational Education. (December 1990)

90-32 Statement of Reasons for Preliminary Draft Regulations for Chapter 3 of Part 59 of the Education Code, Prepared by the California Postsecondary Education Commission for the Council for Private Postsecondary and Vocational Education. (December 1990)

91-1 Library Space Standards at the California State University: A Report to the Legislature in Response to Supplemental Language to the 1990-91 State Budget (January 1991)

91-2 Progress on the Commission's Study of the California State University's Administration: A Report to the Governor and Legislature in Response to Supplemental Report Language of the 1990 Budget Act (January 1991)

91-3 Analysis of the 1991-92 Governor's Budget: A Staff Report to the California Postsecondary Education Commission (March 1991)

91-4 Composition of the Staff in California's Public Colleges and Universities from 1977 to 1989: The Sixth in the Commission's Series of Biennial Reports on Equal Employment Opportunity in California's Public Colleges and Universities (April 1991)

91-5 Status Report on Human Corps Activities, 1991: The Fourth in a Series of Five Annual Reports to the Legislature in Response to Assembly Bill 1829 (Chapter 1245, Statutes of 1987) (April 1991)

91-6 The State's Reliance on Non-Governmental Accreditation, Part Two: A Report to the Legislature in Response to Assembly Bill 1993 (Chapter 1324, Statutes of 1989) (April 1991)

91-7 State Policy on Technology for Distance Learning: Recommendations to the Legislature and the Governor in Response to Senate Bill 1202 (Chapter 1038, Statutes of 1989) (April 1991)

91-8 The Educational Equity Plan of the California Maritime Academy: A Report to the Legislature in Response to Language in the Supplemental Report of the 1990-91 Budget Act (April 1991)

91-9 The California Maritime Academy and the California State University: A Report to the Legislature and the Department of Finance in Response to Supplemental Report Language of the 1990 Budget Act (April 1991)

91-10 Faculty Salaries in California's Public Universities, 1991-92: A Report to the Legislature and Governor in Response to Senate Concurrent Resolution No. 51 (1965) (April 1991)